

SECURING THE BORDERS AND AMERICA'S POINTS OF ENTRY: WHAT REMAINS TO BE DONE?

HEARING

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION,
REFUGEES AND BORDER SECURITY

OF THE

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UNITED STATES SENATE

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SECURING THE BORDERS AND AMERICA'S POINTS OF ENTRY: WHAT REMAINS TO BE DONE?

WEDNESDAY, MAY 20, 2009

U.S. SENATE,
SUBCOMMITTEE ON IMMIGRATION,
REFUGEES, AND BORDER SECURITY,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 10:11 a.m., in room SD-226, Dirksen Senate Office Building, Hon. Charles E. Schumer, Chairman of the Subcommittee, presiding.

Present: Senators Schumer, Whitehouse, Specter, Cornyn, and Sessions.

OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S. SENATOR FROM THE STATE OF NEW YORK

Chairman SCHUMER. The hearing will come to order, and I apologize for being a bit late. Let us get right started.

Less than 3 weeks ago, I presided over a hearing of this Subcommittee entitled "Comprehensive Immigration Reform in 2009: Can We Do It and How?" After listening to the bipartisan testimony from the expert panelists and after hearing from my colleagues on both sides of the aisle during and after the hearing, I became cautiously optimistic that we can pass strong, fair, practical, and effective immigration reform this year. At the very least, I am convinced we owe the American people our very best effort to try and fix what we all acknowledge is a broken immigration system. To that end, the Immigration Subcommittee will convene a series of hearings over the next few months entitled "Road to Immigration Reform in 2009: Clearing the Hurdles."

During these hearings the Subcommittee will directly address the most challenging issues that the American people and the various stakeholders want and need this Congress to resolve as part of a fair and practical immigration solution. My many conversations with the American people have convinced me that the vast majority of Americans are pro-legal immigration and anti-illegal immigration. But I ask my colleagues not to take my word for it. Instead, consider the recent poll numbers that support this conclusion.

According to the latest ABC News/Washington Post poll, 61 percent of Americans would support a program giving illegal immigrants living in the United States the right to live here legally if

they pay a fine and meet other requirements. This number has risen by 11 points since December of 2007. But the same poll also reported that 74 percent of Americans think that the United States is not doing enough to keep illegal immigrants from coming into this country. This number has risen by 7 points since 2007.

The mandate of the American people cannot be any clearer. They will support better immigration laws if they can be convinced that their Government is serious about drastically reducing the number of illegal immigrants entering the United States. Accordingly, the purpose of today's hearing is to determine how to further secure our borders and ports of entry so that we will not be back 10 or 20 years from now discussing the same issues we are discussing today if we pass immigration reform later this year. But before we begin answering this question, we need to set the record straight. The American people need to know that because of our efforts in Congress, our border is more secure today, considerably more secure, than it was when we began debating immigration reform in 2005.

Between 2005 and 2009, a vast amount of progress has been made on the southern border, the northern border, and ports of entry. This progress includes the following: According to real-time data provided by the Department of Homeland Security, the number of people trying to illegally cross the southwest border has decreased by 27 percent compared to last year. This figure was compiled by the Border Patrol through border apprehension numbers. In addition, the Border Patrol tells us that at the end of fiscal year 2005, there were 11,106 Border Patrol agents. As of today, there are nearly 20,000 Border Patrol agents operating between the ports of entry. At the end of fiscal year 2005, only 241 miles of the southwest border were deemed to be under effective control by the U.S. Border Patrol. Today, the Border Patrol will tell us they are in effective control of 700 miles of the southwest border. And as of today, approximately 625 miles of border fence have been built, and the remaining 40 miles will soon be built after disputes with private property owners are resolved.

Those are all new facts on the table as we begin to address immigration reform. And we will remove the chart briefly to make way for the Ranking Member of the Judiciary Committee, Senator Sessions. Thanks for coming, Jeff.

On the enforcement side, ICE has implemented Border Enforcement Security Task Force teams that have made thousands of arrests of drug smugglers and of human smugglers. Finally, border personnel have implemented new technologies such as sensors, light towers, mobile night vision scopes, remote video surveillance systems, directional listening devices, data base systems, and unmanned aerial vehicles along the border. These new technology serve as force multipliers and allow Border Patrol to maintain control of larger segments of the border with fewer agents.

All of these measures have contributed to what the New York Times reported on May 15, 2009, is "an extraordinary decline in the number of Mexican immigrants going to the United States." And that was based on Mexican census data. The border experts in this hearing will show that the border is far more secure than it has ever been and, with our help, will be even more secure.

It is important for the American people to know that all of these measures to secure our border were enacted with the approval of the vast majority of Congress and supported by the three of us here in a bipartisan way. Those of us who support immigration reform have shown our commitment to tough and serious border enforcement. You cannot have one without the other, in my opinion. But for years now, the opponents of immigration reform have continually promised that they will engage in conversation about immigration reform once Congress showed it was serious about securing the border. Our witnesses will confirm today that showing has clearly been made, and this chart—which is sort of blocked by the Chair, but it shows you—it is a very irascible chart.

[Laughter.]

Chairman SCHUMER. This is the border, southwest border, and as you can see, the vast majority—this is the Rio Grande River so we do not have a fence there. But from the western edge of the Rio Grande to the Pacific Ocean, almost the whole border fence has been built. There are a few holes because of property owner negotiations, and those are going to be filled quickly. And that is 700-some-odd miles.

So it is time to end the divisive and unhelpful rhetoric which claims that nothing has been done to secure the border. It is time to re-engage in the long promised yet long delayed conversation about how to best reform our broken immigration system, including doing even more than we have done. That is not off the table at all. It is just that we have made good progress. Many people have said secure the border first, and that is what we are, in a good process, doing. So it is now time for balanced, fair, and tough immigration reform.

As the line-up of witnesses for today's hearing proves, this Committee is determined to solicit diverse points of view in order to achieve the best solutions possible to the various policy questions we must resolve as part of our immigration reform effort. All of these issues we will need to address as part of comprehensive immigration reform, and they are incredibly complex and multifaceted. No one person, no one viewpoint, no one discipline, or one political party will have all the answers. I at least am, therefore, committed to hearing from all who are willing to answer tough questions about whether their proposed solutions for immigration reform are practical, effective, and consistent with our values as a Nation of due process, rule of law, and inclusiveness toward those who come here legally.

I am confident that our distinguished panel today will move us closer toward finding the best solution for securing our borders and ports of entry and look forward with great interest to your testimony. I thank all of you for coming.

Now I am going to call on my colleague, the Ranking Member of this Subcommittee, Senator Cornyn, who aside from his long Rio Grande stretch has a piece of the border fence in his State.

**STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR FROM
THE STATE OF TEXAS**

Senator CORNYN. Well, thank you, Mr. Chairman. I want to thank all the witnesses for joining us here today, particularly three

of my constituents from Texas. Thank you for coming to explain the complexities that confront us when it comes to border security and the challenges of balancing not only security with legitimate concerns about trade which are mutually beneficial to the United States and our trading partners. We have, I think, a great set of witnesses.

I apologize to the Chairman. He knows this as well as I do. We have a Finance Committee walk-through on health care reform which has left the station and is barreling down the track at a high rate of speed, so I am going to be shuttling back and forth. But I will make it back periodically to try to exchange views.

I want to thank you, Mr. Chairman, for making border security the focus of this hearing. As you noted, Texas has a 1,200-mile common border with Mexico, and I have the opportunity to visit the border region often, and I know that border security is much on the minds of my constituents along the border. But they also want to make sure that we pay attention to the mutually beneficial aspects of our trading relationship with Mexico and Canada. My constituents of Texas view NAFTA as a net plus for many, many reasons, and it is important that we preserve the proper balance and do both—encourage trade and also encourage and see that the Federal Government lives up to its responsibility when it comes to border security.

Of course, this is a problem not just for the United States but also Mexico, too. Mexican authorities have told us that a vast majority of weapons they seize from criminals in Mexico are actually smuggled from the United States. I think it is no secret that weapons come from a variety of sources, including China, North Korea, and elsewhere, and some are stolen simply from stockpiles of the Mexican army by corrupt officials who move those into the hands of the cartels. But this is a problem not just with people coming north from Mexico. Border security is a problem about things going south, namely, weapons and bulk transfers of cash as part of massive money-laundering operations of the cartels and the like.

I think it is important, too—and Mr. Torres I see is here from ICE—to recognize the administration's stated commitment—at least, that is what I read in the newspaper—to expand the current program started in the last administration of identifying violent criminals in custody of our sheriffs and police in various county and municipal jail facilities. We know that the people that suffer most from violence perpetrated by these criminals is, in fact, the Hispanic community and minority community itself, because many times these criminals realize they can assault, steal, and otherwise cheat members of the minority community who are here without a visa and perhaps have impunity because they are afraid to complain. So this is a very positive development in my view, and I am glad to read of ICE's and the administration's commitment to continuing and expanding this program.

I mentioned NAFTA. Forty percent of our bilateral trade crosses through the port of Laredo, the largest inland land port in the United States. More than 12,000 trucks and 1,200 rail cars cross the border at the port of Laredo each day. I think it is also in the vein I alluded to earlier, talking about legitimate trade and visits. We had a little bit of a challenge early on, Mr. Chairman, trying

to treat our guests who were complying with our immigration laws the same if they came from Canada as opposed to coming from Mexico. Early on, working with then-Secretary of Homeland Security Tom Ridge, we were able to secure an extension of the so-called Visa Laser Program, a border-crossing card where Mexican individuals who have those cards are properly screened. I mean they are not a threat to the United States. They basically want to come here and buy our goods and services and help stimulate our economy. I think our goal should be ultimately to treat all of our guests who comply with our visa and immigration laws exactly the same, and I look forward to the time when we will treat our visitors from Canada and Mexico exactly the same when they are complying with all of our laws.

I appreciate the chart showing the construction of what the Border Patrol likes to call "tactical infrastructure," other people call "fencing," and other people call "the wall." Depending on how close you get to the border, it becomes more and more controversial. But as I was telling Chief Aguilar, we have been able to work most notably in places like Hidalgo County with the county judge, Judge Salinas, and his team down there, Judge Cascos, in Cameron County and elsewhere to try to come up with win-win solutions. And, in fact, many private property owners have said they are worried about the increasing level of violence and intrusion across Mexico not from people who want to simply come to work, but violent criminals, people smuggling arms and smuggling drugs. And so they are concerned and are working in cooperation with our Border Patrol and law enforcement personnel as well.

We need more Border Patrol agents. We have done a good job increasing that number, but rather than State and local officials having to carry that burden, I think we need more professional law enforcement officers, namely, Border Patrol and officials within DHS to help us provide a secure border. Then, of course, there is technology, which initially has proven to be somewhat disappointing, but which I hope can be improved to provide a virtual fence, not a wall, not necessarily a fence, not tactical infrastructure completely. We realize anything like that you build and if you do not have the people and the technology to work with it, it simply is not going to be a solution but, at least in the opinion of Border Patrol, is a tool that they can use in doing their job.

Finally, let me just say I believe that the Federal Government's credibility is on the line. This to me was the reason why we were unsuccessful in dealing with immigration reform previously, because the American people simply did not believe us when we said we are serious about border security and had for so long done virtually nothing to deal with that problem. So they did not believe, and after the 1986 amnesty signed by Ronald Reagan, where the American people were told if you will accept an amnesty for 3 million people, we will really get serious about worksite enforcement and border security and the like. We saw the amnesty but no worksite enforcement, no border security, and so as the saying goes, "Fool me once, shame on you. Fool me twice, shame on me." And the American people were not going to be fooled again.

I do believe, as the Chairman has said, that we are off on a good start. I do think this is a subject as complex and as emotional as

it can be. The order in which you talk about things is very important. When we talk about border security, tamper-proof identification, and workplace enforcement, I think that is the right order to talk about these things rather than start out talking about a pathway to citizenship for 20 million people at the beginning. The American people will not accept a pragmatic solution to the problems confronting folks who are here without their proper visa until we regain their confidence, and I think the only way we are going to regain their confidence is by showing them that we are serious about security measures, we are serious about the rule of law, and then I believe we can come up with a comprehensive solution that makes sense and the American people will embrace.

Thank you, Mr. Chairman.

Chairman SCHUMER. Senator Sessions.

STATEMENT OF HON. JEFF SESSIONS, A U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Mr. Chairman, it is great to be with you. This is an important hearing. I agree that progress has been made. I have been saying that for some time and not been using divisive rhetoric to say that nothing has been done. I have been saying that from the beginning I have believed that we can make the border a lawful place of entry into the United States, that we could eliminate lawlessness. We are making some good progress. The question is: Will we continue it as the number of illegal entrants go down and we have got more people per illegal entrant to catch the ones that are coming illegally? So it becomes a spiral in the right direction instead of a spiral in the wrong direction.

I see some good things happening. I see some things that are troubling, and I look forward to the hearing. Thank you for having it.

Chairman SCHUMER. Thank you, Mr. Chairman—Mr. Ranking Member.

Senator SESSIONS. We can dream.

[Laughter.]

Chairman SCHUMER. You are a bit aways.

Okay. Moving right along here, I would like to introduce our panel. First, John P. Torres is the Deputy Assistant Secretary for Operations for ICE. From November 2008 to May 2009, he served as the Acting Assistant Secretary of Homeland Security for ICE. He has now been succeeded by John Morton, with whom I have had pleasant conversations and look forward to having him appear before this Committee once he gets up and running.

In his present capacity, Mr. Torres is responsible for coordinating the efforts of the Federal Protective Service, National Firearms and Tactical Training Unit, National Incidence Response Unit, et cetera, et cetera.

David Aguilar is the Chief of the United States Border Patrol, a position he assumed on July 1, 2004. As the Nation's highest ranking Border Patrol agent, Chief Aguilar addresses the enforcement efforts of more than 20,000 Border Patrol agents nationwide. Chief Aguilar brings to the job the knowledge and expertise gained from 30 years of service on the Border Patrol. We thank you for your service.

And Thomas S. Winkowski is the Assistant Commissioner of the Office of Field Operations, the largest and most complex organization in the U.S. Customs and Border Protection. He oversees an operating budget of \$3.2 billion, directs the activities of nearly 27,000 employees, and is responsible for operations at 20 major field offices, 327 ports of entry, 58 Operational Container Security Initiative ports, and 15 preclearance stations in Canada, Ireland, and the Caribbean.

We welcome all three of you gentlemen. Your entire statements will be read in the record. We are asking you to keep yours to 5 minutes here. And I, like Senator Cornyn, the Finance Committee is discussing some very important parts of health care, including hospital funds for New York. So one of my colleagues may be coming here and may have to briefly sit in for me, but it does not express any lack of interest or the fact that I am familiar with the statements you have submitted.

Mr. Torres.

STATEMENT OF JOHN P. TORRES, DEPUTY ASSISTANT SECRETARY FOR OPERATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, WASHINGTON, DC

Mr. TORRES. Good morning, Chairman Schumer, Ranking Member Cornyn, and Senator Sessions. On behalf of Secretary Napolitano and Assistant Secretary John Morton—

Chairman SCHUMER. Could you just pull the microphone a little closer?

Mr. TORRES. Sure.

Chairman SCHUMER. Thank you, Mr. Torres.

Mr. TORRES. I thank you for the opportunity to discuss ICE's efforts and our role in securing the border through the investigation of our Nation's immigration and customs laws.

As the primary investigative agency in the Department of Homeland Security, ICE protects our national security and upholds public safety by targeting transnational criminal networks and terrorist organizations that might exploit potential vulnerabilities at the borders. Recognizing that partnerships are essential, ICE works closely with its domestic and foreign partners at the Federal, State, local, and tribal levels to create a seamless web of border enforcement and a united front to disrupt and dismantle transnational criminal organizations.

While immigration enforcement is a key component of ICE's mission, we cannot and do not establish enforcement priorities in a stovepipe fashion. Instead, we target the organizations that exploit our legitimate trade, travel, and financial systems with all the enforcement authorities to ensure that cross-border crime is attacked from every possible angle. Indeed, the recent escalation of violence by the drug cartels and other criminal organizations just over our border with Mexico demonstrates this point in very stark terms. As Secretary Napolitano has recently testified, the violence in Mexico is not only an international threat; it is a homeland security issue in which all Americans have a stake. The cartels that the Mexican authorities are battling are the same criminal organizations that put drugs on our streets and use violence as a tool of their trade. Illegal money, drugs, and weapons flow both ways across the bor-

der and inextricably link the U.S. and Mexico in our efforts to combat the drug cartels. Our two countries share a nearly 2,000-mile border, billions of dollars in trade, a commitment to democracy, and the need to prevail against the transnational threats of organized crime. We, as a DHS family, are not in a wait-and-see mode. The violence along our southwest border requires a comprehensive and bilateral effort.

Secretary Napolitano issued an Immigration and Border Security Action Directive in January of 2009 to focus on this violence and using the Department's wide-ranging authorities. Additionally, in March of this year, DHS announced several southwest border initiatives designed to crack down on the Mexican drug cartels through enhanced border security. The plan calls for additional personnel, increased intelligence capability, and better coordination with Federal, State, local, and Mexican law enforcement authorities to target illegal guns, drugs, and cash.

In furthering that effort, we partner between the Federal, State, local, and tribal law enforcement in the border region, which is essential to securing our Nation against the threat of cartel violence. Law enforcement agencies at all levels of government have significant roles to play both in addressing the current border violence and in preparing for scenarios where violence in Mexico could further impact the United States. Law enforcement agencies at the State, local, and tribal level have long fought border violence and have deep operational knowledge of the border region. Confronting a multifaceted threat like border violence means that Federal agencies must constantly collaborate and coordinate and work together with our State and local partners by sharing information and resources.

With that in mind, ICE established the Border Enforcement Security Task Forces back in 2006. They are led by ICE, but they work with a number of partners at the Federal, State, and local level, to include our partners here at CBP that are at the table. We work with DEA, FBI, ATF, U.S. Attorney's Offices, and local law enforcement agencies. Across the southwest border, the Mexican Government is committed to participate in the BEST task forces. In fact, five of those now have actual representation from the Mexican Government.

The BEST model has been successful. With the help of our partners, we have been able to crack down on arms trafficking, human smuggling, bulk cash smuggling, narcotics smuggling, et cetera. As such, I would like to share with you a few of our successes: the discovery and repatriation by the El Paso BEST of one of Mexico's top ten fugitives; the arrest by the Laredo BEST of a weapons trafficker supplying cartels with assault rifles and a number of weapons used to murder a Mexican police officer by the name of Navarro Rincon and others; the arrest by the Laredo BEST of a member of the Mexican Mafia gang in possession of approximately 897 pounds of smuggled marijuana after he attempted to run over a Texas DPS, Department of Public Safety, officer; and also the arrest by our Los Angeles Seaport BEST of an arms trafficker and the seizure of 38 military-style weapons.

As such, due to this success, DHS and ICE have committed to adding more resources to the BEST. We have recently doubled the

number of special agents assigned from 95 to 190, which greatly expands our ability to work with local law enforcement.

We have also committed to working more closely with Mexican authorities. Assisting Mexico in our battle against drug violence and immigration violence requires strong coordination with Mexican law enforcement to ensure that Mexico and the U.S. are operating together in combating this transnational threat. ICE engages Mexican authorities on a number of levels in our joint efforts to combat border violence.

We have a Border Liaison Officer Program, for example, where we designate a number of agents across the border to work closely with our Mexican partners and establish regular meetings and contacts. We recently quadrupled the number of those border liaison officers on the southwest border.

We have also strengthened our coordination with the Government of Mexico by increasing our attache personnel in Mexico by sending additional special agents to Mexico City, Tijuana, Hermosillo, Ciudad Juarez, and Monterrey. Through our attache in Mexico City and associated sub-offices in Mexico, ICE assists in the efforts against transnational drug trafficking, weapons smuggling, bulk cash smuggling, and money-laundering syndicates in Mexico. Our attache personnel work on a daily basis with Mexican authorities to combat those transnational threats, and we have added additional officers, again, to all of those offices.

We have also focused recently on the illegal weapons and bulk cash smuggling into Mexico. A larger number of weapons recovered in Mexico's drug war are smuggled illegally into Mexico from the United States. Clearly, stopping this flow is one of our top priorities.

In June of 2008, ICE, CBP, and other Federal and State partners met down in Cuernavaca, Mexico, with our Mexican partners and agreed to add more resources in combination with ATF to focus on southbound weapons smuggling and work with the units down in Mexico.

In summary, I do want to add that my complete statement also focuses on our efforts on immigration enforcement and record levels of that over the past couple of years, and we are committed to working with this Subcommittee to address those challenges, and we are happy to answer any of your questions.

Thank you.

[The prepared statement of Mr. Torres appears as a submission for the record.]

Chairman SCHUMER. Thank you very much, Mr. Torres.
Chief Aguilar.

STATEMENT OF DAVID V. AGUILAR, CHIEF, OFFICE OF BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION, WASHINGTON, DC, AND THOMAS WINKOWSKI, ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION, WASHINGTON, DC

Mr. AGUILAR. Thank you, sir, and good morning.

Chairman Schumer, Ranking Member Cornyn, Senator Sessions, Senator Specter, it is an honor and a privilege to appear before you today. I am honored to be here with Assistant Commissioner Tom

Winkowski, my good partner over at CBP, and another good partner, Deputy Assistant Secretary John Torres, who jointly we are very interested in what happens on the border and I think jointly we will give you a good picture of the successes that we have had and advances that we have had on the border.

Senators, next week the Border Patrol will celebrate 85 years of service, having been officially established by an act of Congress in 1924 on May 28th. Over the years that we have served in the Bureau of Immigration to the Departments of Labor and Justice and now within Customs and Border Protection in the Department of Homeland Security, the Border Patrol has served this Nation with honor and integrity. From a few hundred patrol inspectors, mounted inspectors, we have grown now to 18,945 officers as we speak today. They are, of course, deployed throughout the northern border, southern border, and our maritime and coastal borders.

The Border Patrol is charged, as you know, with the protection of the border between the ports of entry. We are guided in all of our efforts by a solid strategy, and I have to point out, Senators, that this is an all-threats strategy that takes into account not only illegal immigration, which is a big vulnerability and a poses a big threat to our borders, but it also takes into account narcotics, criminals, criminal aliens, and criminal organizations that sometimes believe that they can use our borders within impunity.

With the proper mix of manpower, infrastructure, and technology, the Border Patrol is dedicated to achieving the goal of operational control. This comprehensive approach is critical as no one leg, no one component of our strategy can accomplish the mission alone. We are far better off now than we have ever been with respect to border security. I am confident that with our increased staffing, more tactical infrastructure, and integrated technology improvements we have established a solid anchor for gaining, maintaining, and expanding operational control of our borders.

There is a transformation occurring on our borders. We are transforming the borders of the United States because of the application of our strategy and the tactical infrastructure of the personnel and the technology that is being added. The border regions, both northern and southern, have undergone drastic changes and transitions in the past 5 years. Clearly, the most prominent is the establishment of our tactical infrastructure and the stand-up of varying styles of fencing. With the support from Congress, we have now over 626 miles of fencing in place out of our total goal of 661 miles. We will accomplish that goal.

This was not an arbitrary number that we reached. Our sector chief patrol agents are the field commanders for specific geographic areas around the country, and with the assistance of their staff, arrived at an achievable, sustainable, and economically beneficial need for tactical infrastructure that was designed by them. We continuously assess our progress and how we can improve it. But, clearly, what is now in place has absolutely provided a great benefit to our mission.

In the Yuma Sector, for example, our apprehension rate has plummeted from over 138,000 apprehensions that we made in 2005 to just over 8,000 in 2008, and that number continues to drop. Nationwide, we have seen a decrease from about 1.2 million apprehen-

sions in 2005 to 723,000 in 2008. And to date, we have a 27-percent drop as compared to the same time period last year.

Along the northern border, the most noticeable change has clearly been the increase in staffing. As I just mentioned, the Border Patrol has now grown to over 18,000 agents, of which there were over 1,700 agents assigned to the northern border. With increased staffing we have been able to expand our community outreach, conduct further operations, and develop deeper partnerships with the law enforcement community as a whole. The finest example of coordinate efforts is with our Canadian counterparts through the Integrated Border Enforcement (IBET) Teams.

In today's 21st century world, the Border Patrol has sought to further utilize technology to assist in border security. A critical component of our strategy is technology and being able to effectively utilize the benefits that can be gained through those enhancements. With the development and adoption of new technologies such as infrared cameras, remote video surveillance, and unattended ground sensors, we have been further aided in our mission. With the advent of SBInet and the P-28 proof of concept, the Border Patrol took an enormous leap forward in our mission and mission capability.

The border solution is not a simple solution. When it comes to border security and our agents, they are dedicated to performing our mission. We will continue to explore new technologies and reassess our operational needs to appropriately address the vulnerability gaps.

The border is a dynamic environment, and we strive to meet the demands of today as well as the challenges of tomorrow.

Thank you for the opportunity to describe our plans for border security and to highlight some of our progress to date. I look forward to any questions that you might have of us, sir.

[The prepared statement of Messrs. Aguilar and Winkowski appears as a submission for the record.]

Chairman SCHUMER. Thank you, Chief, and I want to thank both of you for your testimony. Secretary Winkowski is here to answer questions, but as I understand it, Chief Aguilar's testimony subsumes yours. So we are going to go to questions.

The first question I have is for all three witnesses, and I just want to set the record straight for the American people. First of all, I am going to ask you directly whether you agree or disagree with the following statement: "The measures we have taken since 2005 to secure the border have been successful in significantly lowering the number of illegal immigrants seeking to unlawfully cross the border, including a 27-percent reduction this year."

Chief Aguilar, do you agree with that?

Mr. AGUILAR. Absolutely, sir.

Chairman SCHUMER. Commissioner Winkowski.

Mr. WINKOWSKI. Yes.

Chairman SCHUMER. Assistant Secretary Torres.

Mr. TORRES. Yes, sir.

Chairman SCHUMER. Okay. Next question: Do you agree or disagree with the following statement: "The U.S.-Mexico border is exponentially more secure today than it was in 2005 when we began discussing comprehensive immigration reform."

Chief Aguilar.

Mr. AGUILAR. That is correct, sir. It is.

Chairman SCHUMER. Commissioner Winkowski.

Mr. WINKOWSKI. Yes, I agree.

Chairman SCHUMER. Assistant Secretary Torres

Mr. TORRES. Yes, sir, it is.

Chairman SCHUMER. Okay. And I would note some of you came to office in the Obama administration and some in the Bush administration. This is not a partisan issue of any sort.

Now I am going to read to you the main border provisions that were part of the McCain-Kennedy bill from 2006, which I think Senator Cornyn directly diagnosed it. The reason the bill failed is the American people did not have faith that there would not be a future wave of illegal immigrants if we passed that bill.

First, here is what it was supposed to do: Develop a national strategy for border security that describes actions to achieve operational control over all borders and ports of entry; double the number of Border Patrol agents and increase the number of ICE agents by 200; establish initiatives with Canada, Mexico, and Central American countries to protect the border; deploy border technologies designed to serve as "force multipliers" to achieve greater operational control of the border; complete border fencing in the Yuma and Tucson, Arizona, Sectors; increase the number of helicopters and boats for us by the Border Patrol.

Have all of these metrics been met? Chief Aguilar.

Mr. AGUILAR. Yes, sir.

Chairman SCHUMER. Do you agree, Secretary Torres?

Mr. TORRES. Yes, sir.

Chairman SCHUMER. And Commissioner Winkowski?

Mr. WINKOWSKI. Yes.

Chairman SCHUMER. Okay. So these are not law. I mean, they may be part of other laws, but this is what was laid out in the McCain-Kennedy bill, and it seems we have gone a good way for achieving it.

OK, next question: There are people, blogs, cable television, radio, who raise the fear factor with the American people when they state that our southwest border will not be secure unless we build a wall across the entire length of the southwest border, that is, a 2,000-mile wall. So, in effect, what they are saying is you need a wall on the Rio Grande parts of the border, not just the landlocked parts of the border, where, as I said, except for 40 miles, that has been done, 700 miles of fence.

So do any of you agree that we need to build a fence on the rest of the border, the Rio Grande part of the border, to be secure, that that is essential for security?

Chief Aguilar.

Mr. AGUILAR. No, sir. The fence that has been designed and is in the progress of being built, the 661 miles, is what has been defined by the experts on the ground, the field commanders, as what is needed along with the continuing maturation of our personnel and the continued augmentation of technology that is on its way.

Chairman SCHUMER. Has smuggling or illegal crossings across the Rio Grande decreases at a rate consistent with the rate we have heard overall, 27 percent?

Mr. AGUILAR. Absolutely, and in some cases, it is even higher, sir.

Chairman SCHUMER. Even higher.

Mr. AGUILAR. Yes, sir.

Chairman SCHUMER. So we are doing pretty well by the river. We have the natural barrier, the river, I guess.

Mr. AGUILAR. Absolutely.

Chairman SCHUMER. Okay. How about you, Secretary Torres? What do you think of this idea of building—that we need to build a fence along the 1,200 or so miles of the Rio Grande border?

Mr. TORRES. Well, I agree with our expert here, Chief Aguilar, and I see that in addition to the efforts of the Border Patrol some of the enforcement initiatives that we have undertaken in the interior of the country have also contributed to the decreases and the people attempting to be smuggled into the United States.

Chairman SCHUMER. We are going to have hearings on that, too. Believe me, I feel that is the most important thing we can do. If you prevent employers from hiring illegal immigrants, that will cut off the flow as effectively as anything, and we are going to explore that.

Commissioner.

Mr. WINKOWSKI. Mr. Chairman, I agree with Chief Aguilar. I do think there is one thing we have to keep in mind that, as we close off between the ports of entry, the impact at the ports of entry. I think that is something that we need to keep an eye on.

Chairman SCHUMER. And give me your analysis of how we are doing.

Mr. WINKOWSKI. Well, as we prevent people from coming between the ports of entry with our tactical infrastructure and our technology, they will seek other ways of coming into the country, such as through our ports of entry. And we have got to be prepared at our ports of entry—which we are—things such as the stimulus package that was recently passed, the \$720 million to really work on our infrastructure, which is so sorely needed; the plus-up in staffing that we had; the upcoming implementation of the Western Hemisphere Travel Initiative with machine-readable documents.

Chairman SCHUMER. Have any of you noticed a change in the commitment to building the existing fence and following the law, both virtual and concrete? In the new administration, is there any diminution of enthusiasm for that, monies for that, et cetera?

Mr. AGUILAR. No, sir.

Chairman SCHUMER. Chief, you have served under both administrations.

Mr. AGUILAR. Absolutely. No, sir. There is a continued—

Chairman SCHUMER. Could you please pull your microphone forward?

Mr. AGUILAR. I apologize. No. Not only is there a continued interest, but there is also a continued testing of our thinking on the requirements. Once we have briefed, once we have identified the rationale, everybody is in agreement that we will continue to build the fence, we will continue to fund the technology requirements that we have identified.

Chairman SCHUMER. Great. Okay. I want to thank our witnesses. I am going to turn over the chair to Senator Specter for a brief

while, while I try to defend New York hospitals at the Finance Committee. And I will be back. I want to thank the witnesses for their testimony.

I have complete confidence in handing the chair over to Senator Specter. He has far more experience than I do chairing these committees, but this will be the first time he is doing it from this side of the podium. Senator Specter.

Senator SPECTER [presiding]. Thank you very much, Mr. Chairman. I am very comfortable in the center.

[Laughter.]

Senator SPECTER. Senator Sessions.

Senator SESSIONS. Senator Specter, I am glad to be with you, Mr. Chairman.

Well, my good friend Chuck Schumer forgot a little of the history on the fence and how hard we had to battle and how hard I had to force votes, and then we would authorize the fence, and then the appropriations bill would have zero money in it for the fence, and the American people had to shut down the switchboards, and we finally got the message up here. So I do not think the politicians have in any way distinguished themselves, ourselves, in this matter.

But I do agree that progress is being made, and I have always believed that was possible. The numbers are at least as—well, I will say it this way: Based on what we have done and what we could have done in addition and did not do, I guess we are making some pretty good progress on reducing the flow of immigration here. But about 3 years ago, we were arresting 1.1 million and now it is about 700,000 some, which is still a lot. I mean, that is not a lawful border when you are arresting 700,000 annually, and we are not there yet.

Mr. Aguilar, with regard to the barriers, just for clarification, when we wrote this amendment, of course, we did not offer an amendment that would build a wall across the entire border. Somebody may call in to a talk show and say that, but that was not what those of us in Congress proposed. We proposed 700 miles.

Now, what are vehicle barriers? And how are they different from fencing?

Mr. AGUILAR. Vehicle barriers are basically designed to keep vehicles, anything that has a carrying capacity, across our borders. They are very specific and very unique to geographical areas that lend themselves to vehicles or any kind of carrying capacity coming across. That is a type of defense that we need to have in those specific areas.

Senator SESSIONS. But a pedestrian could get across that barrier.

Mr. AGUILAR. A pedestrian can get across that barrier, yes, sir. But by design and by implementation, they are placed where pedestrians are not as likely—there is always the possibility, but not as likely to try and penetrate that border on foot.

Senator SESSIONS. Well, the Chairman says we have got 700 miles of fencing. How many miles of fencing and how many miles of vehicle barriers do you have today?

Mr. AGUILAR. As we speak today, we have 626 miles that we have built. We will be accomplishing 661. The total number of miles, combination, that we will have in place at 661 will be 116

miles total in California, 115 in Texas, 115 in New Mexico, and 313 in Arizona.

Senator SESSIONS. How many of those are vehicle barriers and how many are fencing?

Mr. AGUILAR. I would have to get you those numbers, sir. I have them here. I will dig them up right now.

Senator SESSIONS. Well, I think we just need to get that straight because the legislation called for fencing, which is better.

Let us talk a little bit about the El Paso division. My staff has talked with some of the CBP folks there, and the fence has been built there. Would you agree—I guess, Mr. Aguilar, I would ask you—that El Paso has seen a dramatic reduction in apprehensions there from 122,000 in 2006 to 30,000 in 2008?

Mr. AGUILAR. Yes, sir. Those numbers are correct.

Senator SESSIONS. And I understand that crime in El Paso has dropped in general. Is that correct?

Mr. AGUILAR. That is correct. It has dropped, and El Paso, I believe, still remains as the third safest large city in the Nation.

Senator SESSIONS. I think that is a remarkable achievement, Mr. Chairman. Part of securing the border there with the fence and increased Border Patrol officers and sophisticated use of technology, you have drawn that illegal entry way down and the crime rate has gone down, and El Paso is one of the third safest cities in America, according to the numbers I had.

But you still, I understand, are averaging 48 apprehensions a day, but that is a lot better than 300 a couple of years ago.

Mr. AGUILAR. Yes, sir.

Senator SESSIONS. That is the basic trend you would see there, Mr. Aguilar?

Mr. AGUILAR. Yes, sir. And El Paso, just as a point of clarification, takes in not only El Paso proper and the surrounding areas, but also takes into account basically the entire State of New Mexico border also.

Senator SESSIONS. Mr. Torres, isn't one way the thing that we can help our friends in Mexico—and I am really impressed with our efforts to step up their national security, to crack down on the organized gangs that even threaten the independence of the nation, and I think we should help. Isn't one good way we can help is to make a priority to prosecute the criminal gangs in our cities that are connected to these cartels in Mexico and when you do so, you draw up the sources of their money that flow back to these cartels in Mexico and give them the power that enables them to threaten the Government of Mexico?

Mr. TORRES. Yes, sir, Senator. In fact, over the past couple of years, we have implemented a couple of programs—two programs just targeted specifically at what you are talking about. One is our Operation Community Shield, which has resulted in over 11,000 gang members that we have arrested since 2005, a number of those of which we have prosecuted. But then we also have what is called Operation Repeat Offender that we focused along the southwest border, where we take people who have committed crimes that we have identified and screened in the States' prisons and jails along the southwest border. Actually, we do it nationwide, but a lot of the focus is on the southwest border. We take those people we identify

who have committed a crime and who have also previously been deported, and we work with the U.S. Attorney's Office to prosecute them federally for re-entry after deportation statute. And, historically, they have been receiving close to—or being sentenced close to 3 to 5 years in prison. So, in effect, it takes them, just as you said, out of that theater of violence along the southwest border, so we are not just deporting them again so they can try to come back in and be encountered by a Border Patrol agent or someone at the port of entry.

Senator SESSIONS. Yes, I think that is a real way to help them, because some of them move back and forth, and some just ship money back home to strengthen those cartels.

I would just say with regard to the new administration, a number of things are being continued that are good, like Operation Streamline, and I would like to talk a little more about that. My time is up, but the President has denied requests for continuing—

Senator SPECTER. Senator Sessions, if you want a little more time, go ahead.

Senator SESSIONS. All right. Thank you. He has denied a request for additional National Guard troops there. The policy that seems to be working in the workplace, Mr. Torres, could be good if we primarily target the employers who knowingly participate in this. But also, when you do not remove those who have proven to be using false IDs and are here illegally, we are back to a catch-and-release policy. I think that sends an unwise message, and I do think that some of the actions have raised real questions in my mind about the commitment of the Department to State and local participation in this effort.

And, finally, just to wrap up, on the question of Operation Streamline, I am seeing good numbers. This is where in certain sectors when the Border Patrol officers apprehend someone, they are actually prosecuted, maybe a week or two, whatever, in jail. They get a misdemeanor conviction if it is their first offense, which is different from just taking them right back to the border and sending them home, because they come back the next day.

What I have seen in Del Rio, Mr. Aguilar, is that in 2005 there were 68,000 apprehensions there. In 2008, after Streamline has been in place where they are routinely prosecuted, the apprehensions are 20,000, a 70-percent decrease. In Yuma, pre-Streamline there were 117,000 apprehensions. After that, it dropped to 8,000, a 93-percent decrease. In Laredo, there was 56,000 in 2007, and 2008 is a partial. Streamline, it dropped to 46,000. And in Tucson, in 2007 apprehensions were 379,000, and the numbers have dropped to 126—well, I do not have the full year on that, so that is 2009 to date, 126,000, but it looks like a good reduction there.

So do you believe that is having an impact on the decline of entries presumably?

Mr. AGUILAR. Absolutely. Where we have implemented Operation Streamline or Streamline-type operations as a part of our comprehensive approach, it is having a tremendous impact.

I would like to just point out that the fundamentals of a border enforcement model are the ability of the Border Patrol to be able to detect, deter, identify, classify, and resolve any kind of cross-bor-

der illegal entry. The fence or the tactical infrastructure that we referred to does a lot of the deterrence. In addition to that, anything that gets past us, there has to be a consequence to it, of which Operation Streamline is part of our consequence package, if you will, that we bring to bear against anything that does get through even our enforcement model.

Senator SESSIONS. Thank you.

Thank you for being very kind to me, Mr. Chairman.

Senator SPECTER. Thank you, Senator Sessions.

Picking up on a thread on Senator Sessions' comments with respect to the drug problem—and the smuggling of arms is a big factor—do the Border Patrol improvements have any impact on the smuggling of weapons? That is obviously something which is given a lot of fire power, improve the capacity of the drug dealers to function, imperil the Mexican Government. Mr. Winkowski, we have not given you a speaking part yet. Would you care to respond to that?

Mr. WINKOWSKI. Yes, thank you, Senator. As you know, with part of our Southwest Border Initiative, we are conducting an assortment of outbound operations looking for weapons as well as bulk currency going south into Mexico. I can tell you we have had a lot of success from the standpoint of bulk currency seizing since March of this year, over \$13 million going south.

From the standpoint of weapons going south, we have had some seizures, but not military grade type of weapons. It has been more handguns and shotguns and personal use type of weapons. But we do have ongoing operations on a regularly occurring basis and a post and surge mode down on the southwest border.

Senator SPECTER. What could be done, Commissioner Winkowski, on stopping the flow of those military weapons?

Mr. WINKOWSKI. I think there are a number of things that we could do. One is to continue doing what we are doing from the standpoint of post and surge. I think the other huge piece here is, you know, over in ICE from the standpoint of their ongoing investigations that they have ongoing in this particular issue.

The other thing that we are working very hard on, you do have legitimate weapons that are going down south that are transiting, for example, the United States. They have all the proper State Department licenses and things of that nature, and we have been working very, very closely with Mr. Torres' staff on making sure that those weapons are reaching the right end users.

So I think a combination of post and surge operations, the investigative side, and the monitoring of the end users side—

Senator SPECTER. Those legitimate weapons are not part of the problem?

Mr. WINKOWSKI. Pardon me?

Senator SPECTER. Those legitimized weapons are not part of the problem?

Mr. WINKOWSKI. Well, you know, from our standpoint, those weapons that are going down, perhaps transiting the United States, do have the proper licenses, and we do believe we have, you know, the proper safeguards in place, working with ICE, on who the end user is and making sure that it gets to the end user.

Senator SPECTER. One final question. You see news reports from time to time about immigrants being smuggled into the United States in these large vans, so-called 16-wheelers. Have the precautions taken and improvements made so far been any help in monitoring that horrendous practices?

Mr. WINKOWSKI. Yes, at the ports of entry, with the technology that we have received from the Congress this fiscal year, the stimulus package, for example, \$100 million in new money for technology, as well as in our fiscal year 2009 budget, \$30 million. That certainly is one step in the right direction.

I know there are issues interior-wise with individuals that are in cargo containers that, you know, in some cases there are deaths that I know that the Chief and Mr. Torres have been dealing with.

Senator SPECTER. Well, thank you very much, gentlemen. Senator Sessions has requested 30 seconds. You may start with 30 seconds.

Senator SESSIONS. Thank you.

Mr. Aguilar, I have the number here from, I believe, your Department that there have been 323 miles of single-layer pedestrian fence, 302 miles of vehicle fence, and that is how you get the 626 number, and only 33 miles of the double-layered secondary fencing.

Mr. AGUILAR. That is correct.

Senator SESSIONS. Does that sound correct?

Mr. AGUILAR. Yes, sir.

Senator SESSIONS. Thank you.

Senator SPECTER. Senator Sessions, you still have 7 seconds left. [Laughter.]

Senator SESSIONS. You have already indulged me enough, Mr. Chairman.

Senator SPECTER. You just used your time.

Thank you very much, gentlemen.

Senator SPECTER. We will now proceed to panel two: Congressman Hayworth, Sheriff Wiles, Mayor Foster, Professor Massey, and Mr. Vale. If you gentlemen would be seated, we are going to proceed.

Our first witness is former Congressman J.D. Hayworth, a Member of the U.S. House of Representatives from 1995 to 2007, representing the 5th Congressional District of Arizona; author of the book, "Whatever It Takes: Illegal Immigration, Border Security, and the War on Terror." He now hosts an afternoon political radio show in Phoenix and serves as a consultant and motivational speaker.

Thank you for coming back to Washington, Congressman Hayworth, and the floor is yours.

STATEMENT OF HON. J.D. HAYWORTH, FORMER UNITED STATES REPRESENTATIVE, 5TH DISTRICT OF ARIZONA, PHOENIX, ARIZONA

Mr. HAYWORTH. Senator Specter, thank you very much for this opportunity to testify, and I ask unanimous consent that my complete testimony be made a part of the record.

Senator SPECTER. Without objection, it will be.

Mr. HAYWORTH. Let me begin by highlighting two very popular words from the "Washington Political Lexicon." The first is "bipar-

tisan.” The second is “comprehensive.” In my opinion, the Federal Government’s inability to secure our borders and enforce our immigration laws has been a bipartisan failure.

First, the Bush administration and now the Obama administration have both expressed the desire for so-called comprehensive immigration reform. While the term “comprehensive” suggests complete or all-encompassing reform, the American people see it for what it is: amnesty for those who have entered our country illegally.

When members of this body attempted to move such a piece of legislation in the summer of 2007, their constituents made it clear that they wanted no part of it. The Senate switchboard was overloaded, and the ill-advised legislation was abandoned.

Yet here we are again, almost 2 years later, with this same ill-advised policy objective as this Committee’s apparent goal. Why?

Here is some genuine straight talk: because some Republicans want “cheap labor” and some Democrats want “cheap votes.”

Sadly, what has been shortchanged in this deficient political calculation is the border security—indeed, the national security—that our country so desperately needs.

It was my honor to serve in the U.S. Congress for 12 years. I was here on September 11, 2001. Who would have thought that nearly 8 years following that fateful day, we as a Nation would still be dithering over something as elemental to our national defense as truly securing our borders?

Certainly we have created new bureaucracies and enacted new laws. But if people are not obeying existing law because the Government is not adequately enforcing existing law, what makes us think that any new laws will make a difference?

What results is a type of “public policy schizophrenia,” all because official Washington views this as a political problem to be managed, when in reality it is a national security problem that must be solved.

Two policy objectives indicate the gulf between the real and the ideal.

First, the Secure Fence Act of 2006 was signed into law by President Bush. It requires the construction of at least 700 miles of double-layered fencing along our southern border with Mexico. But only about 200 miles of such fencing has actually been completed because the Department of Homeland Security has chosen to count old single-layered fencing and vehicle barriers as part of the new fence. Now smugglers are using collapsible ramps to drive over those vehicle barriers.

Moreover, the Obama administration recently introduced the notion of a “virtual fence,” despite its initial test failures in my home State of Arizona. Perhaps the new round of testing can take place not in Arizona, but at 1600 Pennsylvania Avenue. Do you think the Secret Service would be willing to eliminate the “real fence” that surround the White House?

And the irony here is that building a real border fence, with real protections, could create real jobs and would be a stimulus project that I believe would prove both popular and practical.

Speaking of popularity in the workplace, the Los Angeles Times reported last week that the “Federal Government’s E-Verify pro-

gram, which seeks to reduce the hiring of illegal immigrants, is becoming increasingly popular, with 1,000 new businesses signing up each week.”

Despite this, critics on both the left and right find fault with the error rate of 4 percent, which means there is an accuracy rate of 96 percent, and Homeland Security Secretary Janet Napolitano said e-Verify is “a cornerstone of workplace enforcement across the country.”

Yet workplace enforcement is the second policy objective which prompts contradictory reactions.

The February 24th sweep of an engine parts manufacturer in Bellingham, Washington, resulted in 28 arrests.

In response, Secretary Napolitano complained that Immigration and Customs Enforcement, or ICE, failed to notify her of that raid in advance and announced an investigation into the communications policies of ICE.

Those arrested were subsequently released, and Secretary Napolitano later refined her response, claiming that employers would now be the focus instead of illegal workers.

But with those actions, Secretary Napolitano in essence publicly berated her Department’s own agents for enforcing immigration law.

And that brings us back full circle. Americans want our immigration laws enforced.

A man from Phoenix addressed the matter squarely in an e-mail to me. His observation, and I quote: “Wouldn’t it make sense to first legislate and implement comprehensive border enforcement as well as comprehensive employee verification before we take on comprehensive immigration reform?”

Yes, that makes great sense. But, unfortunately, official Washington shows few signs of following common sense on this issue.

Mr. Chairman, I have included the full text of Chapter 9 of my book “Whatever It Takes” in my complete testimony, and, again, I would like to thank the Subcommittee for the opportunity to testify, and I will be glad to answer any questions you may have.

[The prepared statement of Mr. Hayworth appears as a submission for the record.]

Chairman SCHUMER [presiding]. Thank you, Congressman Hayworth, former Congressman.

I am going to introduce the next four witnesses and ask them each to put their entire statements in the record and speak for 5 minutes each consecutively.

Richard Wiles is the sheriff of El Paso County, Texas. He has held that position since 2007. Prior to that he served as Chief of Police of the city of El Paso. He is a member of the Texas Border Sheriffs Coalition, has 27 years of law enforcement experience, and manages over 1,400 employees.

Do you want to add something, Senator Cornyn, since he is your constituent? We have a lot of your constituents here today?

Senator CORNYN. We do. Thank you for that. These are people who know a lot about the border, and I am delighted they are here to share their expertise.

I would just say, because I want to hear from them, that hopefully the sheriff can talk a little bit about the impact on local and

State law enforcement officials of the Federal Government's failure to live up to its responsibilities, and the importance of providing both the financial support to border sheriffs and other law enforcement officials to help make up the burden. It is basically an unfunded mandate that the Federal Government has imposed on State and local officials as a result of the Federal Government's failure to deal with border security issues.

But I am delighted to have him and the mayor here with us, and Sam Vale, my friend who is very active in the Border Trade Alliance and who can talk a lot about not just border security but also the importance to our economy of trade across our borders.

Thank you very much.

Chairman SCHUMER. Okay. And we have Chad Foster, as Senator Cornyn mentioned, mayor of Eagle Pass, the city of Eagle Pass, Texas, appointed by Governor Perry to the Texas Department of Transportation Border Trade Advisory Committee, chairman of the Texas Border Coalition, a member of the Alliance for Security and Trade, and co-chair of the Border 2012 Amistad District, and is a member of the Middle Rio Grande Regional Review Committee.

Douglas Massey is the rare witness not from Texas. He is the Henry G. Bryant Professor of Sociology and Public Affairs at Princeton University's Woodrow Wilson School. He specializes in the sociology of immigration, has published extensively on immigration through the southwest border. He is the author of two seminal books on immigration and population migration entitled "Crossing the Border" and "Beyond Smoke and Mirrors."

And Samuel Vale—I do not have a little sheet here. Somehow it was left out. But maybe we can have Senator Cornyn make the introduction, and I will just ask unanimous consent that Samuel Vale's introduction be added to the record.

Senator CORNYN. Well, I mentioned that Mr. Vale, Mr. Chairman, is very active in the Border Trade Alliance as a board member. He actually is president of the Rio Grande City Starr-Camargo Bridge Company, so he knows a lot about the ports of entry and the need for funding for infrastructure, including personnel to facilitate trade. And so I think rather than me go on, let us just hear from him.

Chairman SCHUMER. OK, great. And also President of Telemundo 40, President of the Starr-Camargo Bridge Company, President of the Border Pacific Railroad Company. So he has a lot of experience.

Gentlemen, each of your statements, like Congressman Hayworth's, will be read into the record. Sheriff Wiles, you can proceed.

**STATEMENT OF RICHARD WILES, SHERIFF, EL PASO COUNTY,
TEXAS, EL PASO, TEXAS**

Mr. WILES. Thank you, Chairman Schumer and Ranking Member Cornyn. Good afternoon.

First, just to clarify a previous statement made, El Paso is a large city, over 700,000 residents. It has been ranked one of the—either the second or third safest large city in the United States for the past 12 years, long before the new fence was built. So I just want to make that clear.

We certainly look forward to comprehensive immigration reform. We believe it is needed. My concern is that we do not make a solution that one size fits all. We do not want to lump the problems together and address it with just one solution.

From a law enforcement perspective, I see two issues. Illegal immigration and undocumented immigrants is one, and there seems to be a misperception in some communities across our country that people who illegally enter our country from Mexico do so for the purpose of engaging in criminal activity. And that could not be further from the truth. Members of the U.S. Border Patrol, without hesitation, will admit that the vast majority are here for economic reasons. In many respects, they enter illegally knowing that there are employers here that want and need their labor. It is as if we are waving them in with one hand and telling them to stop with the other.

What should be the law enforcement response to illegal immigration in our local communities? I am not pro-illegal immigration. As a law enforcement officer, I respect the laws of our country and the necessity for them to be followed for an orderly and safe society. But immigration and immigration enforcement rest solely with the Federal Government and Federal agencies. And as you mentioned, Senator Cornyn, I believe the Federal Government has failed in that respect. And when the Government ignores its duties and obligations, unfortunately that burden sometimes does fall on State and local officials.

In the past, there has been a discussion of local, county, and State law enforcement agencies "assisting" in the area of immigration enforcement. That is not good policy. While Chief of Police in El Paso, I was a member of the Major Cities Chiefs Association, which is comprised of the largest 64 law enforcement agencies in the United States and Canada. I was one of nine members of a subcommittee that ultimately made recommendations to the full association that were adopted in June 2006, and I have attached a copy of that report to my testimony for your review.

The general recommendation is that local law enforcement should not be engaged in the enforcement of Federal immigration law. Although there are many reasons, I will concentrate on two main ones. First, we lack the resources. We can barely keep up with what our community expects us to do now. Second, local law enforcement depends on the cooperation of the community it serves to prevent and solve crimes. In fact, many local agencies spend large amounts of time, energy, and money—a lot of Federal grant money—developing relationships just for this purpose. The enforcement of Federal immigration laws by local law enforcement will undermine these efforts and impair cooperation and communication between local law enforcement and the communities they serve.

Additionally, last year I attended a conference on local law enforcement and immigration enforcement put on by the Police Foundation in Washington D.C., which was well attended. The vast majority of agency heads at the conference agreed with the findings of the Major Cities Chiefs Association. The Police Foundation is actually scheduled to release a new report this afternoon discussing how local immigration enforcement challenges the public safety mission of law enforcement agencies. The report is titled "The Role

of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties.”

Federal agencies have the personnel, the training, equipment, and systems in place to handle immigration enforcement. If they are deficient in any of these areas, that is something for them to overcome, not a reason to put an additional burden on local, county, and State agencies which are already struggling to keep up with the demands they face.

Which leads me to the second issue, and that is the unique criminal issues faced by law enforcement agencies in our border communities. Due to the demand all across our Nation, illegal drugs continue to flow north while money and weapons flow south. In addition, we must deal with human smuggling and border crime, which many times are offenses committed against undocumented immigrants, such as robbery, sexual assault, kidnapping, and even homicide.

These acts clearly are within our jurisdiction and responsibility and take law enforcement resources away from our neighborhoods when we have to respond to them. But we understand we have an obligation to protect all persons within our borders, and we respond appropriately without regard to immigration status. Our purpose is to prevent crime and, when we fail to do that, to apprehend criminal offenders. But we also understand that when we arrest a drug smuggler, a drug seller, a human smuggler, or a rapist, it prevents drugs and crime from expanding into other areas of our country. In this regard, we are truly at the front lines using local resources to address a national problem.

Our main concern is border and community security. Our position on immigration enforcement works, and it shows in the fact that we are an extremely safe community. And we want to remain one of the largest safe cities in the United States. We are growing and expanding, and we want to maintain the safety and security necessary for our citizens to be free from crime and the fear of crime. I believe that if we became involved in Federal immigration enforcement, that trust and respect we have with our community would fracture and fail. It would create a communication gap that would hamper our ability to continue our efforts in crime reduction.

If the Federal Government needs the help of local law enforcement, it would be better concentrated on issues related to crime. We are already working with many Federal agencies on issues such as drug smuggling, weapons trafficking, gangs, vehicle thefts, et cetera. With the proper resources, we stand ready to assist our Federal and State partners on issues that are important to all of us and most certainly the communities we serve and represent. Ultimately, the entire Nation benefits when we are successful at stopping the flow of illegal drugs and preventing criminals from continuing to victimize our citizenry.

Thank you very much.

[The prepared statement of Mr. Wiles appears as a submission for the record.]

Chairman SCHUMER. Thank you, Sheriff.
Mayor Foster.

**STATEMENT OF HON. CHAD FOSTER, MAYOR, EAGLE PASS,
TEXAS**

Mr. FOSTER. Yes, sir, thank you. Chairman Schumer, Ranking Member Cornyn, I am Chad Foster, again, the mayor of the city of Eagle Pass, Texas, and also the Chairman of the Texas Border Coalition. I am speaking today on behalf of 2.1 million citizens, American citizens, along the 17 counties on the Texas border, which encompasses 1,250 miles. Ours is a region of contrasts, exhibiting differences and similarities of language, culture, tradition, and economy.

The multinational, multicultural nature of our communities on both sides of the international boundary gives our region a distinct sense of place.

When the Senate last debated immigration reform, I recall the opponents of the bill saying that the borders had to be secured before any visas could be reformed or any effort made to legalize the status of the undocumented among us. As mentioned, these conditions have been met. Improvements and additions to our ports of entry, in my opinion, the land ports are now our weakest link. We need your help and we would appreciate it now.

We are within sight of operational control of the border between the ports of entry, and that puts our ports under greater stress. According to the Government Accountability Office, we needed 4,000 new officers to secure the ports of entry before we placed the new emphasis on southbound checks to stop the trafficking of guns and cash. We needed \$4 billion in infrastructure and technology. We need 1,600 more CBP officers, along with 400 canine units. We need the southbound operations to be controlled by CBP, which has training in dealing with the traveling public, and not Border Patrol, whose training with travelers is more confrontational. We need \$130 million for 350 new ICE investigators to work on firearms-trafficking and money-laundering investigations and \$20 million for improved tactical field communications for CBP and ICE. We cannot afford to delay the \$20 million that CBP needs to modernize its database used to identify potential criminals at the ports of entry or the \$50 million for Operation Stonegarden to reimburse State and local law enforcement for their participation in border actions.

The 9/11 terrorists came to the United States through ports of entry. Most undocumented immigrants enter the United States through ports of entry. Most of the illegal drugs entering our country come through ports of entry. No border wall will solve these problems. Illegal border crossing arrests at the Texas border have been falling for more than 3 years, without a wall, a great tribute to the deterrence of our Border Patrol and CBP officers. Arrests this year along the southern border are likely to be way below the nearly 1.6 million during the peak in 2000.

In their headlong rush to achieve an arbitrary deadline to erect an ineffective wall, the Bush administration chose to abandon our Nation's laws that commit us to preserving our environment, our culture, our history and our religious liberties. We cannot afford to go down that path again—a path that waives all laws.

The Chertoff waivers will affect the natural movement of animal species, including the larger mammals that are on the threatened

or endangered species lists, and cause irreparable harm to the unique eco- and bio-systems located along the Rio Grande River. They provided carte blanche for the destruction of cultural and religious artifacts that are irreplaceable to our heritage. The avoidance and mitigation of these damages is not an inconvenience to the Government. They are essential liberties of our national fabric, guaranteed to the people of the United States under Articles I and II of the Constitution. We demand that Congress require the enforcement of our commitment to being a Nation of laws. We support the repeal of the unconstitutional waiver authority and urge the repeal of the Secure Fence Act in favor of measures that will provide our region with real security.

The Texas Border Coalition wants to finish the job of securing the border by enacting immigration reform. We support an earned legalization program for the undocumented people who are in the U.S. today. We need an effective guest worker program to prevent the immigration policy and political failures from repeating themselves in another general immigration reform. We need more than a bill; we need that balance, the ideological and political continuum in Congress and the Nation.

Thank you.

[The prepared statement of Mr. Foster appears as a submission for the record.]

Chairman SCHUMER. Thank you, Mayor.

Dr. Massey. We are going to try to move things along because we have a vote at about 11:45.

STATEMENT OF DOUGLAS MASSEY, PROFESSOR OF SOCIOLOGY AND PUBLIC AFFAIRS, PRINCETON UNIVERSITY, PRINCETON, NEW JERSEY

Mr. MASSEY. Good morning, Senators. Thank you for the opportunity to testify. I am a social scientist who has been studying immigration for three decades, and I co-direct a research project that has been in the field for more than 25 years and generates the largest and most reliable source of data on the behavior of documented and undocumented migrants to the United States.

During the 1970s the United States declared a War on Crime; during the 1980s it declared a War on Drugs; and in the 1990s it seemed to have declared a War on Immigrants. In my view, these policies had more to do with domestic politics than with the underlying realities of crime, drugs, or immigration, with negative consequences all around.

In the case of immigration, the 1986 Immigration Reform and Control Act launched what proved to be a two-decade-long militarization of the Mexico-U.S. border. From 1980 to 2000, the number of Border Patrol agents increased 3.7 times, line watch hours rose by a factor of 6.5, the agency's budget increased by a factor of 12.

Paradoxically, this militarization occurred as undocumented migration reached its peak and was beginning to move downward. It also unfolded as we were drawing closer to Mexico economically, by treaty agreeing to lower the barriers to cross-border movements of goods, capital, information, services, and certain classes of people.

Between 1980 and 2000, total trade increased 9 times, business visitors by 7.4 times, treaty investors 10 times, and intracompany transferees 27 times. Somehow we seem to want to integrate all factor markets in North America except one, and to magically build a border that is impermeable to all flows except that of workers. This fundamental contradiction was not sustainable.

Nonetheless, border enforcement accelerated during the 1990s despite the fact that the rate of undocumented migration to the United States had been falling for several years. The 1990s War on Immigrants was followed by the post-9/11 War on Terror, which quickly became conflated with immigration and identified with the Mexico-U.S. border, despite the fact that none of the hijackers entered from Mexico, that country has no Islamic terrorists cells, has no significant Muslim population, and by that point was experiencing a declining rate of undocumented migration. Border enforcement, nonetheless, rose exponentially after September 11th, with the Border Patrol budget increasing 95 times its 1980 level and the number of line watch hours rising 111 times. After 9/11, deportations also began a marked increase, rising from just 11,000 in 1980 to some 350,000 in 2008, breaking old records last set during the era of mass deportations in the 1930s.

As already noted, this massive increase in enforcement came during a time of North American economic integration and falling rates of undocumented migration and did not solve America's immigration problems. Although the probability of taking a first undocumented trip fell after 1990 and the likelihood of taking an additional trip fell after 2000, even more pronounced was the sharp decline in the rate of return migration. Between 1980 and 2005, the likelihood of returning to Mexico within 12 months of an undocumented entry fell by more than half.

This shift in behavior occurred because the militarization of the border increased the costs of border crossing from \$600 to \$2,200, while increasing the risk of death and injury, but had no effect on the probability of apprehension itself. Given the higher costs and risks of border crossing, fewer migrants left; but those who did leave still got across the border because the odds of apprehension did not rise. Once inside the United States, they hunkered down and stayed longer and in larger numbers to avoid experiencing the costs and risks of border crossing again. In sum, it was because of a decline in return migration and not an increase in entry from Mexico that the undocumented population ballooned during the 1990s.

In the past 3 years, estimates suggest that the undocumented population has peaked and is beginning to trend downward. This development is no doubt partly because of the remarkable acceleration in border enforcement in the wake of 9/11 and the rise of mass internal deportations; but it also reflects the evaporation of labor demand in the United States. Nonetheless, rising enforcement and growing joblessness have not prompted a significant return of already settled migrants. As we have seen, the rates of departure have fallen to record low levels. At the same time, a quiet but massive increase in the availability of guest worker visas has provided a legal alternative to undocumented entry. According to official

data, the number temporary legal workers entering from Mexico rose from 3,300 in 1980 to 361,000 in 2008.

These data clearly indicate that Mexican immigration is not out of control. It rises and falls with labor demand, and if legitimate avenues for entry are available, migrants enter legally. The massive militarization of the border and resumption of mass deportations occurred despite the fact that rates of undocumented migration were falling, and the perverse consequence was that these actions lowered the rate of return migration among those already here.

To solve our serious immigration problems, we need to undertake a program of legalization for those already resident in the country, and especially for the more than 3 million people who entered the country as minors and are guilty of no sin except obeying their parents. We also need to provide for the legal entry of Mexicans by increasing the number of permanent resident visas and guest worker permits to levels consistent with the needs of an integrated North American economy.

Unfortunately, the current immigration crisis is very much one of our own making, reflecting bad policy choices in the past; but, fortunately, this means that with better policy choices we have the power to resolve the dilemma moving forward.

Thank you for your time and attention.

[The prepared statement of Mr. Massey appears as a submission for the record.]

Chairman SCHUMER. Thank you for speeding your testimony but getting it all in.

Mr. Vale.

STATEMENT OF SAMUEL F. VALE, PRESIDENT, STARR-CAMARGO BRIDGE COMPANY, RIO GRANDE CITY, TEXAS

Mr. VALE. Thank you very much, Chairman Schumer and Ranking Member Cornyn and other distinguished members of the Committee, for the invitation to be here. My name is Sam Vale. In addition to owning and operating a private port of entry that the rent you pay could support all the others for 1,000 years, it is something we feel efficiencies at the ports are of utmost importance to our border security. The question that you are talking about today is something that we have been talking about for 30 years, and we will probably be talking about it for another 30 years. It is not new, and there is nothing static about the security on the border. It changes. It is different on the Canadian border. It is different on the Mexican border. It is different from port to port. The typical approach in Washington is one size fits all. That is not true. We are all different. We have got different traffic compositions, different people crossing for different purposes. So we feel that it is particularly important that we sit down and talk about these things on a port-by-port basis.

We also find that there is a great failure to understand that the daily crosses at our ports of entry are primarily the same people. We have a significant portion of our border crossers that cross each and every day. And, by the way, we are also the people that generate sales taxes and property taxes, and we pay taxes to the IRS, and we make money for the Government. So the more we can do

business, the more the Government gets to have money to spend on the things that are needed for other people in the Government.

We do not really need to have another security program added to what we have until we go back and examine the effectiveness of what is there. However, the need for comprehensive immigration reform is an equal priority to security because the foundation of security is identifying people. How can you leave 20 million people out of a databank and think you are going to identify people? You have got to know who is there. You have got to know who enters and who leaves the country.

Our partners in Canada and Mexico are the No. 1 people we sell goods and services to. Good grief, we want them to be able to buy our stuff.

When you talk about southbound inspections on the southern border, CBP has never really had that as a priority. Now, if it is about weapons, why don't we have ATF down there in greater numbers. You do not need 100. You need 200. You need 100 doing nothing but intelligence gathering. By the look of a couple of you guys, you probably have read in the history books about World War II. What was the greatest source of intelligence? The partisans. We need more people. We need more intelligence. Our ATF people have the skills today to go out in the very short term and gather more intelligence so that the southbound inspections are based on real-time information, and then you add the computer models and all the toys and all the things that they like to put into this. It is really a critically important issue.

We can also tell you that along the border, you want to export a gun? It does not have to look like a gun. It can be parts, a part going through California, a part going through Texas, a part going some other way. You can put them together pretty quickly. Just ask any of our Special Forces how they take them apart and put them together.

So it is a complex process, and if they are crossing between our ports, bring stuff north, you would think they might want to take something south. It is kind of like what we do in trucking. You need a back haul. In any event, you get to something that you all did that was very good, the \$720 million for stimulus package. Unfortunately, most of that was spent on small ports that do not carry a significant portion of the traffic. I am a small-port guy so I cannot say anything bad about small ports. But I can tell you this: Secretary Napolitano said that she completed the Mariposa port for \$200 million designed before we had a stimulus package. That was included in what she paid for.

What we need is boots on the ground. What we need is a surge like we had in Iraq. We need a lot of people there. We need Border Patrol. We need officers. We need inspectors. We need agents. And if you want to talk about how getting north on the border is, ask ICE to design a way to come into the United States, and I bet you that half of their stuff gets through. So with fences, without fences, it is not a simple matter, and we have got to stop talking in Pollyanna ways. They have built a good fence in Arizona in the marine military bombing base. Current technology. It stopped everybody.

[The prepared statement of Mr. Vale appears as a submission for the record.]

Chairman SCHUMER. Well, thank you, Mr. Vale. I want to thank all of our witnesses. We are going to try to get through the questions before the vote is called.

First, I am going to ask the same question to all five panelists—and I would like yes or no answers, and then we will get into detail—that I asked the first panel.

Do you agree or disagree with the following statement: “The measures that we have taken since 2005 to secure the border have been successful in significantly lowering the number of illegal immigrants seeking to unlawfully cross the border, including a 27-percent reduction this year”? Congressman Hayworth, yes or no.

Mr. HAYWORTH. Mr. Chairman—

Chairman SCHUMER. Yes or no.

Mr. HAYWORTH. Thank you for that kind reception. Somewhat.

Chairman SCHUMER. Somewhat. OK, fair enough.

Mr. WILES. I agree with him.

Chairman SCHUMER. Somewhat.

Mr. WILES. Yes. Which is rare.

Mr. FOSTER. On the Texas border, I believe the apprehensions have fallen since 2005, 56 percent. What is watering those numbers down is the other borders, but, no, they have fallen.

Chairman SCHUMER. But you do agree with the statement.

Mr. FOSTER. Absolutely.

Chairman SCHUMER. Dr. Massey.

Mr. MASSEY. No.

Chairman SCHUMER. You do not agree.

Mr. MASSEY. No.

Chairman SCHUMER. Okay. And Mr. Vale.

Mr. VALE. No. It is about jobs being available.

Chairman SCHUMER. Okay. You do not believe then that the—

Mr. VALE. I do not believe it was caused by our security measures. I think that is part of it, but not the controlling factor.

Chairman SCHUMER. Got it. OK, good.

The second question I have is—well, I think that answers it. Let me first go to Congressman Hayworth. You have testified that only 200 miles of border fence have been constructed. We heard the previous panel, who were the ones who were doing it, who say there is 626. Can you explain that discrepancy?

Mr. HAYWORTH. Certainly, Mr. Chairman. In your absence, at the end of the testimony, Senator Sessions got the accurate figures. What is happening is there is a change and a redefinition, and you are no stranger to the legislative process. You know the intent of Congress sometimes changes with actual implementation.

In terms of what was going on on the border, what has been counted by the Department of Homeland Security is not entire double-layered fencing, which was the original intent in the Secure Borders Act. We are counting single-layer old-style fencing, about 10 feet high. And more problematic, the vehicle barriers, again, sir, in your absence, it was explained that the vehicle barriers are not foolproof, that pedestrians can gain access, and also we have seen reporting and documentation that with the use of collapsible ramps—

Chairman SCHUMER. But wait a second. You are saying it is not the fence you want, but there is 626 miles of a fence at least 10-foot high, one barrier. Is that true or false?

Mr. HAYWORTH. No. That is not what I am saying. I am saying—

Chairman SCHUMER. No, but is that true or false?

Mr. HAYWORTH. Well, there is not 600 miles of single-layer fencing. What I have just said, sir, is that there is a combination of single-layer; the double-layered fencing the legislation called for; and some vehicle barriers. What I am also pointing out, sir, is one of the problem, Mr. Chairman—

Chairman SCHUMER. But you said there is only 200 miles of fencing. We are getting into the definition of—

Mr. HAYWORTH. Only 200 miles of double-layered fencing.

Chairman SCHUMER. Okay. Is that what your testimony—

Mr. HAYWORTH. Would you like to hear about—

Chairman SCHUMER. Is that what your testimony said?

Mr. HAYWORTH. What I am clarifying for you in the question time—and if you would like me to do it, I appreciate the courtesy of getting a chance to answer your question, sir. What I am saying to you, Mr. Chairman—

Chairman SCHUMER. I am just trying to resolve a discrepancy here.

Mr. HAYWORTH. Well, what I would say to you, sir, is this: Rhetorical discrepancies notwithstanding, the problem I am trying to report to you is what has been reported in the media in Arizona and nationally of the way that smugglers are defeating the barriers. And if they are defeating the barriers in terms of the so-called vehicle barriers with ramps, there are real problems.

Chairman SCHUMER. That was not the question I asked you. I understand that you might feel we need more. I am just asking: Is there a fence, minimum 10-foot high, for the vast majority of the non-Rio Grande border? And the answer is yes. And, you know, if we are ever going to come to agreement here, we have to agree on the facts.

Now, you can say, yes, there is, but it is not good enough, it is not stopping things, you do not agree with the 27-percent reduction, or it is due to something else. Those are all fair answers. But to simply put in your testimony that there is only 200 miles of fence, most people, if they looked—

Mr. HAYWORTH. Two hundreds miles—

Chairman SCHUMER.—at the fence for the other 450 miles would say that is a pretty big fence. You may say it does not work for the following reasons, but let us try at least—I am trying here to stick to the facts.

I want to ask you just one other question, Congressman. Then I am going to move on. I believe that Americans will accept a system, broadly defined, that is pro-legal immigration and anti-illegal immigration; in other words, if you could guarantee to people or make people feel very good—which, admittedly, we did not in the last bill; that is why it failed; I agree with Senator Cornyn's analysis—that we would stop the flow of future illegal immigrants, they would feel much better about a system of legal immigration. Do you agree or disagree with that? You can elaborate.

Mr. HAYWORTH. Well, thank you, sir, very much. Mr. Chairman, I believe that part of the problem has come through the process that so-called comprehensive reform means a simultaneous border enforcement with an alteration of the status of those who have come here illegally. I think it is important—and I think we have seen this in terms of a variety of policies legislatively—that we work first with what is the crucial problem. The crucial problem is first securing the border. The second thing is having along with that accurate verification of employees and those who are here. And despite the diversity of viewpoints here, we have heard that. And then, and only then, can the debate about guest workers and the immigration reform that some desire move forward.

So my word of caution and my perspective is secure the border first. Comprehensive employee ID.

Chairman SCHUMER. Got it. And you would agree that, in your words, we have secured it better somewhat.

Mr. HAYWORTH. Somewhat, but there is a long way to go, Mr. Chairman.

Chairman SCHUMER. I understand. That is a value system. I mean, you might say we should not do anything on legal immigration until there is not a single illegal immigrant who crosses the border. It is all a value system, and you are in one place, and I respect that and appreciate it.

Mayor Foster, do you think the border enforcement measures have played a role in making El Paso more secure?

Mr. FOSTER. Well, again, the sheriff referenced El Paso. El Paso, with a population of over 700,000, has been the second or third—

Chairman SCHUMER. Eagle Pass. I am sorry.

Mr. FOSTER. Oh, Eagle Pass? Historically, Eagle Pass has been a very safe and tranquil city. We have had two murders in the last 10 years. We are basically a very quiet, safe border community. I am in Piedras Negras, our sister city, on a daily basis. Yes, we are very secure. But this has enhanced—but, again, the focus today is on our ports of entry.

Chairman SCHUMER. And my last question to Sheriff Wiles. You said also that you thought we were somewhat effective in curtailing flows across the border. Could you elaborate on that?

Mr. WILES. Well, it is exactly what has been said by other members of the panel. Most of the issues that we deal with from a criminal aspect come right across the ports. Not to say that the Federal agents do not do the best job they can do, but the majority of drugs, criminals, individuals who will come over here to criminalize our citizens come right across the ports of entry.

Chairman SCHUMER. Okay. My time has expired.

Senator Cornyn.

Senator CORNYN. Sheriff, let me follow up on that. Do you think the best solution to that is more Federal law enforcement officials at the ports of entry or better technology or data sharing? Or what do you think is the right solution?

Mr. WILES. Well, all three of those things, and I think there has been some commitment by the present administration to do just that. We are seeing additional Federal agents, especially in the area of ATF, thank goodness. We only had nine agents in El Paso until President Obama's administration committed to adding addi-

tional agents there, when we knew that many weapons—and we understand that not all of Mexico's problems with weapons are coming from the United States, but certainly there is a problem. There are weapons from the U.S. going into Mexico, and we do our best to work with the Federal agents to conduct southbound checks, to stop stolen cars, money, and weapons from going into Mexico. But we need the assistance of the Federal Government who has expertise in dealing with these issues at the appropriate levels of the Mexican and U.S. Federal Governments. And until we got that commitment, we did not have it.

Senator CORNYN. And you heard me, I think, in my opening statement talk about the administration's commitment to continue and expand the ICE program of working with local sheriffs and police chiefs to screen the prisoner population at the local level for criminals who come in the country and perpetrate crimes, as you said, largely upon other immigrants. In other words, we are not talking about people come in without a visa.

Mr. WILES. Right.

Senator CORNYN. We are talking about robbers, rapists, murderers. Do you support the expansion of that in the El Paso County Jail? And how do you think it is working so far?

Mr. WILES. Well, I think as long as it is targeted in that direction. We have a rather large county jail—it is two jails. It holds about 2,440 prisoners, and there are people coming in and out of there all the time, many of them for minor offenses—traffic offenses, public intoxication, things of that nature. And we do not want our time consumed with those types of issues. As long as it concentrated on those type of violent offenders that potentially could hurt our community, we definitely support that.

Senator CORNYN. And if there is anything we can agree on, I hope we can agree on that. It sounds like just a common-sense approach to dealing with not the whole problem but part of the problem. And, indeed, as you said, these are the people who tend to prey on others in the immigrant community.

Mr. WILES. Right.

Senator CORNYN. This is something we ought to be able to agree on.

Mr. WILES. Yes, sir. Well, nobody wants criminals here, whether they are our citizens or citizens from another country, victimizing people.

Senator CORNYN. I wanted to ask Congressman Hayworth, what I confront when I come down to McAllen or El Paso or Eagle Pass is my constituents say, "You know, we do not see the problem here in terms of terrorists coming across the border." But I want to just ask the question because of your experience in Congress and the information that you no doubt have had access to.

We know that there are people that traverse Mexico that come from other countries because of the weak border Mexico has on its own southern border. Indeed, La Frontera recently reported that the Mexican authorities in Reynosa apprehended a dozen Iranians, among others, who had come up through Central America, through Mexico, and attempted to come into the United States. And then we know down in South America in the tri-border region, where

there is a significant Lebanese population, that there is strong financial support for Hezbollah there. Is that part of your concern?

Mr. HAYWORTH. Mr. Chairman, Senator Cornyn, absolutely. And I would supplement that with a report last fall from the sheriff of Cochise County who told me of apprehending a number of Chinese illegals coming across. But there are obviously national security concerns, and, again, we are hearing diverse perspectives here, Senator, but different pieces of the puzzle. And while obviously the concentration from some on this panel has been ports of entry involving trade—what was the great saying from baseball? “Hit ‘em where they ain’t.” When you have got a border as diverse and as large as ours, when you have people intent on crossing that border, there is an obvious security threat, and with that knowledge, that border security is ultimately national security. That is why what you are pointing out and other border sheriffs have pointed out is so important and must be preeminent in our policy decisions.

Senator CORNYN. We seem to have a recurrent theme here in terms of Washington’s perspective on the border that it is all the same; and my experience and observation, and certainly talking to several of my constituents in your home towns, is that it is not, and that it is quite varied. And, in fact, the Federal Government, while looking at the 30,000-foot level, said, for example, Mr. Vale, that \$720 million was included for land port infrastructure, which is a good thing. But your testimony is that it is not directed toward the high-volume ports of entry. Congress cannot pat itself on the back, in other words, and say, “Way to go. We sent money for infrastructure,” when, in fact, there is such diversity and difference of conditions there along the border.

Would you agree with that? I think you would, but would you respond to that?

Mr. VALE. Yes, sir. Congress did a good job in sending the dollars. What the Congress did not do is watch how they spent it. And that is the big issue. It was not anything that was stimulus related. It is the kind of things that you could have done in your annual appropriations totally legitimately.

Senator CORNYN. Well, I happen to agree with you, and things we should have done on an annual appropriations basis, because it is hard to see how stimulative that was, but they were necessary, and I am glad Congress took that step.

Well, Mr. Chairman, I appreciate the opportunity, and I know we have a vote that is winding down here, so I am going to go vote. But thanks to my constituents who are here. Thanks to the entire panel for coming and sharing your expertise and perspective.

Chairman SCHUMER. Thank you, Senator Cornyn. I want to thank the panel. I had more questions, too, but we have a vote, and rather than keep everybody and detain them, we are going to leave the record open for 5 days, and we may submit written questions if you all wouldn’t mind answering those. And I want to thank the panel for being here.

As I said, we are going to do comprehensive hearings on every aspect, every difficult aspect of immigration reform, because I believe the American people want a solution. They just do not want one perspective. They want a comprehensive solution, and you have provided a multiple of perspectives for us that we have to take into

account. So thank you all for being here, and thank you for your testimony.

The hearing is adjourned.

[Whereupon, at 11:58 a.m., the Subcommittee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

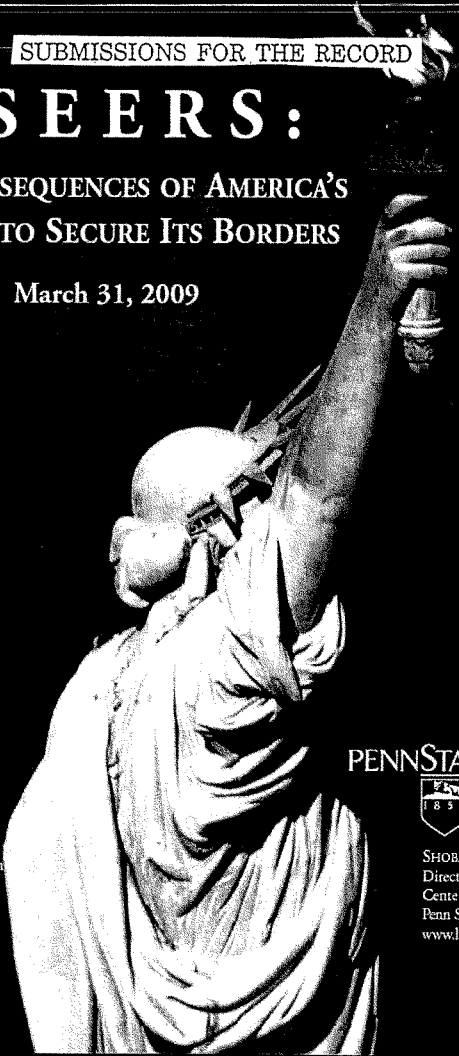
**Questions for the Record to El Paso Country Sheriff Richard Wiles
From Senator Ron Wyden
May 28, 2009**

1. As the Sheriff of a border county, you are familiar with the requirements and procedures for utilizing Article 4 of the Mexican Federal Penal Code to prosecute crimes committed in the United States by Mexican nationals who have returned back to Mexico. In your experience, has Article 4 been a useful tool for obtaining convictions in crimes committed by Mexican nationals?

As the Sheriff of El Paso County, Texas and previously as the Chief of Police for the El Paso Police Department, I have found that Article 4 prosecutions are most definitely a useful tool in obtaining convictions in crimes committed in the United States by Mexican nationals who flee to Mexico to avoid prosecution.

2. Do you believe that a federal program to provide coordination, training, and resources for Article 4 cases would help law enforcement officers to improve and expand the ability to pursue Article 4 investigations and prosecutions?

Although our jurisdiction has some experience with Article 4 prosecutions because of our proximity to the border, other law enforcement agencies do not have this experience and may find it complex and time consuming. As such, I do believe that a coordinated effort by the federal government would assist in dealing with this issue that has obvious international implications.




SUBMISSIONS FOR THE RECORD

NSEERS:


THE CONSEQUENCES OF AMERICA'S
EFFORTS TO SECURE ITS BORDERS

March 31, 2009



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PREFACE

On behalf of the American-Arab Anti-Discrimination Committee (ADC), the Center for Immigrants' Rights (Center) at the Pennsylvania State University's Dickinson School of Law prepared a white paper on the National Security Entry-Exit Registration System (NSEERS or "special registration").¹ The white paper provides a legal and policy analysis of the NSEERS program, and recommendations for a new administration. In conducting the research, students at the Center interviewed immigration attorneys who have represented individuals impacted by the NSEERS program; and advocates and policymakers who have spoken or written about the NSEERS program in the larger context of United States immigration and counterterrorism policies after September 11, 2001. In addition, the Center examined governing statutes, regulations and statistics issued by the Department of Homeland Security (DHS). Finally, the Center reviewed previous reports by advocates and non-governmental organizations regarding the NSEERS program, and more than forty related federal court decisions.

The American-Arab Anti-Discrimination Committee (ADC), which is nonpartisan and nonsectarian, is the largest membership organization in the United States dedicated to protecting the civil rights of Arab-Americans. ADC was founded in 1980 by former Senator James Abourezk to combat racism, discrimination, and stereotyping of Americans of Arab descent. With headquarters in Washington, D.C., and offices in New Jersey, Massachusetts, Michigan, and California, ADC has 38 local chapters and members across the nation. Through its Department of Legal Services, ADC offers counseling in cases of discrimination and defamation and selected impact litigation in the areas of immigration. ADC also coordinates its efforts closely with local, state and federal government agencies in facilitating open lines of

communication with the Arab-American community. In the wake of September 11, 2001 (9/11), ADC has had a visible presence in the struggle against increasing government encroachment into the lives of both Arab American and Muslim citizens and immigrants. Working in conjunction with other non-profit organizations, research and policy institutions, ADC has voiced strong opposition to government programs that profile based on ethnicity, nationality or religion.

The Center for Immigrants' Rights is a new clinic at the Pennsylvania State Dickinson School of Law whose mission is to represent immigrants' interests through legal excellence, advocacy, education, and collaboration with key stakeholders and the community. The Center teaches law students the skills necessary to be effective immigration advocates and attorneys, primarily through organizational representation, where students work on innovative advocacy and policy projects relating to U.S. immigration policy and immigrants' rights. Students build professional relationships with government and nongovernmental policymakers, academics, and individuals. Students acquire essential practical and substantive knowledge of immigration lawyering and advocacy through project specific work, weekly classes, readings, reflection papers, and "case rounds."

Contributing authors and editors of this white paper include: Amala Abdur-Rahman, law student at the Pennsylvania State Dickinson School of Law; Fahed Al-Rawaf, Legal Advisor to the American-Arab Anti-Discrimination Committee; Johanna Montero, law student at the Pennsylvania State Dickinson School of Law; and Shoba Sivaprasad Wadhia, Director of the Center for Immigrants' Rights at Pennsylvania State Dickinson School of Law. ADC and the Center recognize the following individuals for reading and providing insights on an earlier

version of this paper: Nadine K. Wettstein, Director of the American Immigration Law Foundation's Legal Action Center; Melissa Frisk, Senior Attorney at Maggio & Kattar, P.C.; Kerri Sherlock Talbot, Associate Director for Advocacy at the American Immigration Lawyers Association; Nancy Morawetz, Professor of Clinical Law at the New York University School of Law, and Malea Kiblan, an immigration attorney at Kiblan Law Offices, P.C.. ADC and the Center also thank Sin Yen Ling, Staff Attorney Asian Law Caucus, for taking time from her busy schedule to discuss the early days of special registration; Edward Alden, Senior Fellow at the Council on Foreign Relations and noted author of Closing of the American Border, for his spirit and in-depth of knowledge about the intersections of security and immigration; and Mary L. Sfasciotti, Esq., who contacted the Center and shared the compelling story of a client who is struggling to support his family after being determined to be in willful violation of special registration. ADC and the Center also thank Priya Murthy Esq., Policy Director at South Asian American Leaders for Tomorrow; Rashida Tlaib, Representative in the Michigan House of Representatives; Jesse Moorman, attorney at the Human Rights Project; and Benjamin Johnson, Executive Director of the American Immigration Law Foundation.

EXECUTIVE SUMMARY

The National Security Entry-Exit Registration System (NSEERS) program was implemented as a counterterrorism tool in the wake of September 11, 2001. The NSEERS program required certain non-immigrants to register themselves at ports of entry and local immigration offices for fingerprints, photographs and lengthy questioning. The most controversial aspect of the NSEERS program was a “domestic” component that solicited registrations from more than 80,000 males who were inside the United States on temporary visas from Muslim-majority countries. In September 2003, of the more than 80,000 individuals who complied with call-in registration, 13,799 were referred to investigations and received notices to appear, and 2,870 were detained.² Many non-immigrants subjected to the NSEERS program did not understand the details of the program, as the rules were unclear and public outreach and notice were insufficient.

NSEERS’s initial mission was to keep track of non-immigrants and prevent terrorist attacks. However, interviews with immigration attorneys representing individuals impacted by NSEERS and policy advocates, and a review of multiple reports and federal court decisions reveal that the NSEERS program was unsuccessful as a counterterrorism tool.

Many of the individuals who legally challenged the NSEERS program entered the United States lawfully, diligently complied with the NSEERS program, were predominantly male and Muslim, and had an immigration violation such as overstaying a visa that came to the attention of the immigration agency after complying with NSEERS. Moreover, many individuals impacted by NSEERS do not appear to have terrorism charges or criminal histories. Notably, many of these individuals have meaningful family, business and cultural ties to the United States.

Indeed, more than seven years after its implementation, NSEERS continues to impact the Arab-American community. Impacted individuals include those who are married to United States citizens or meaningfully employed in the United States. Well-intentioned individuals who failed to comply with NSEERS due to a lack of knowledge or fear have been denied “adjustment of status” (green cards), and in some cases have been placed in removal proceedings under the theory that they “willfully” failed to register. This scenario has torn apart Arab-American families because of the real implications of having a parent or spouse without a legal status.

NSEERS has also raised a number of public policy questions. Public outcry, governmental criticism of the program, and judicial challenges demonstrate that the program has not necessarily benefited the United States’ domestic and foreign policy. Today, the United States is at a critical and historic juncture: a new Administration presents an opportunity to restore America’s character, and reexamine and overhaul ill-conceived policies implemented in the last eight years. With this in mind, this white paper offers the following recommendations to the Obama Administration:

1. The Administration should terminate the NSEERS program and repeal related regulations.
2. Individuals who did not comply with NSEERS due to lack of knowledge or fear should not lose eligibility for or be denied a specific relief or benefit, to which they are otherwise

eligible. Similarly, the Administration should provide relief to individuals who were placed in removal proceedings because of their participation in NSEERS.

3. The Administration should allow individuals impacted by NSEERS, who have been removed, to return to the United States, should they have a basis for re-entering the United States. Special consideration should be given to individuals with immediate family members living in the United States and/or those with pending benefits applications.
4. The Administration should eliminate programs that target people based on ethnic origin, race, nationality, religion and/or gender. The Administration should insure that agencies adhere to a standard of individualized suspicion.
5. Upon termination of the NSEERS program, the Administration should issue a formal apology to foreign visitors subject to the NSEERS program, in order to rectify the impression left on many affected communities impacted by the special registration program. The apology should be issued through a press release and a formal letter posted on the website of the Department of Homeland Security. The government should clarify that ethnic origin, race, nationality, religion and/or gender alone are not a sufficient basis of criteria for identifying terrorists.
6. With transparency being a pillar of the current Administration, DHS should release the number of terrorists identified through the NSEERS program and related data, in order to assess the government's professed success of the program.

INTRODUCTION

Times of crisis are the true test of democracy. Our nation still bears the scars of an earlier crisis when our government went too far by detaining Japanese, German, and Italian Americans based on their race, ethnicity, or national origin. We should not repeat these painful mistakes.

-- Letter from Senator Russell Feingold, Senator Edward Kennedy and Representative John Conyers, December 23, 2002.

In the wake of the September 11, 2001 terrorist attacks on the United States, the American government declared a war against terrorism, and the “prevention of another terrorist attack” became the primary focus of the George W. Bush Presidency.³ A reexamination of immigration laws and controls was inevitable in light of the fact that each of the 19 terrorists was foreign-born and entered the United States with a temporary valid tourist or student visa.⁴ What ensued were efforts by the United States government to virtually close the borders following the terrorist attacks, and put in place measures targeted primarily towards immigrants from Arab or Muslim nations.⁵ Within less than one year of the 9/11 attacks, the Department of Justice (DOJ) detained hundreds of non-citizens in connection with a 9/11 investigation- hereinafter called the September 11 detainees.

According to the DOJ’s Inspector General, detainees were pursued and arrested through a variety of methods, including anonymous tips made by people who were “suspicious of Arab and Muslim neighbors who kept odd schedules.”⁶ The Inspector General also revealed that many of the September 11 detainees were denied a fair process or access to the courts and were subject to harsh conditions of confinement.⁷ Beyond the 9/11 investigation, the government issued dozens of immigration policies for reasons of “national security.” For example, the DOJ issued a memorandum requiring immigration judges to close all hearings related to individuals detained

in the course of the 9/11 investigation; instituted programs to “interview” thousands of Arab and Muslim men living in the United States for information; issued a proposed rule to “clarify” the requirement that every non-citizen report his change of address to the agency within 10 days of moving or else face criminal and civil charges, including deportation; and issued regulations authorizing the former Immigration Naturalization Services (now Department of Homeland Security) to detain any non-citizen for 48 hours for an unspecified “additional reasonable period of time” before charging the person with an offense.⁸

Many of these policies targeted immigrants from Arab and South Asian countries with Muslim-majority populations.⁹ Critics have argued that the government’s use of immigration law through such policies as a counterterrorism tool after September 11, 2001 failed to make the nation safer; discriminated against individuals based on nationality and religion; and modified the character of this nation.¹⁰ The National Security Entry-Exit Registration System (NSEERS or “special registration”)¹¹, the subject of this white paper, is one practice where immigration law was used as a counterterrorism tool. The NSEERS program, which was rolled out in June 2002, required certain non-immigrants to register themselves at ports of entry and local immigration offices. The most controversial aspect of the NSEERS program was a “domestic” component that solicited registrations from more than 80,000 males who were inside the United States on temporary visas from Muslim-majority countries. In September 2003, of the more than 80,000 individuals who complied with call-in registration, 13,799 were referred to investigations and received notices to appear, and 2,870 were detained.¹² Many non-immigrants subjected to the NSEERS program did not understand the details of the program, as the rules were unclear and public outreach and notice were insufficient.

Despite the “suspension” of certain aspects of the NSEERS program in December 2003, many individuals and families continue to be impacted. Some individuals affected by NSEERS are unable to obtain meaningful and legal employment to support their families.¹³ Mr. Abdul-Karim Nasser is one of those individuals. Mr. Nasser, a native of Morocco, came to the United States as a visitor in 2001, and fell in love with and married Patricia Amy Stewart, an American citizen.¹⁴ They have three young children, all of whom were born in the United States. Mr. Nasser stated in his complaint that he was not aware of the requirement for registration. According to Mr. Nasser’s complaint, “at all times relevant hereto, Plaintiff in good faith attempted to comply with the special registration requirements of the NSEERS program established by the Attorney General which consisted of multiple and confusing notices published in the Federal Register expanding the class of affected foreign citizens and nationals, changing the deadlines for compliance and listing varying periods of admission.”¹⁵ Ms. Stewart filed an immediate relative petition on her husband’s behalf on February 5, 2002, and on that same date Mr. Nasser filed an application for adjustment of status and work authorization.¹⁶

Pursuant to his pending adjustment, Mr. Nasser appeared at a local DHS office on June 3, 2003 for the processing of his employment authorization application. Despite being called in to process his work authorization, at no point did DHS advise Mr. Nasser that he needed to register under NSEERS.¹⁷ On January 19, 2006, Mr. Nasser underwent special registration as a condition of his pending application for adjustment of status.¹⁸ On March 21, 2006, Nasser was denied adjustment of status and was found to have “willfully” violated NSEERS.¹⁹ This has left Mr. Nasser in the difficult position of being ineligible to work because he has no legal status in

the United States,²⁰ and has harshly impacted him and members of his immediate family.²¹

The government's practice of profiling communities based largely on national origin and religion through NSEERS and other law enforcement programs endures. In September 2008, Immigration and Customs Enforcement (ICE) released hundreds of records on "Operation Front Line," a secret government program designed to "detect, deter, and disrupt terrorist operations" leading up to the 2004 Presidential election through the 2005 Presidential inauguration.²² As described by the joint statement from Yale Law School and ADC, "[a]ccording to Department of Homeland Security statistics, citizens from Muslim-majority countries were 1,280 times more likely to be targeted by Operation Front Line than citizens from other countries. Moreover, 76 percent of those investigated were men."²³ The findings further reveal that NSEERS was one of the databases utilized to identify targets for Operation Front Line.²⁴ In a related complaint filed on February 26, 2009 with the DHS's Office for Civil Rights and Civil Liberties, ADC stated, "[s]imilar practices [to Operation Frontline] burgeoned in the post 9-11 era, and resurfaced in spite of the rather null level of success and effectiveness in finding terrorists or those connected to terrorism. The National Security-Entry Exit Registration System (NSEERS), commonly known as "special registration," was another practice where immigration law was used as a counterterrorism tool with no real success. Similar to previous practices, the end result of NSEERS was the deportation of thousands of individuals, with not a single individual being charged with a terrorism related crime. Similarly with Operation Frontline, not a single individual was charged with terrorism related crimes."²⁵

LEGAL AUTHORITY AND ANALYSIS*Statutory Foundation for NSEERS*

In 1996, Congress passed the Illegal Immigration Reform and Immigrant Responsibility Act, Public Law 110 (IIRAIRA).²⁶ Section 110 of the IIRAIRA introduced the concept of an electronic “entry and exit data system” that integrates arrival and departure information required under the law in an electronic format and in a Department Of Justice or Department of State database, including those databases used at ports of entry and consular offices.²⁷ In 2000, the Data Management Improvement Act of 2000 amended section 110 of the IIRAIRA which, among other things, clarified that the new entry and exit system should not be construed to permit the United States government to impose any new documentary or data collection requirements and created a taskforce made up of governmental and private industry representatives to review the establishment of an entry and exit system.²⁸

After 9/11, Congress revisited the entry and exit system, and as part of the USA PATRIOT Act,²⁹ incorporated a “Sense of Congress” that stated, “[i]n light of the terrorist attacks perpetrated against the United States on September 11, 2001, it is the sense of the Congress that the Attorney General, in consultation with the Secretary of State, should fully implement the integrated entry and exit data system for airports, seaports, and land border ports of entry, as specified in section 110 of the Illegal Immigration Reform and Immigrant Responsibility Act [...] with all deliberate speed and as expeditiously as practicable.”³⁰ In developing the entry and exit system, the USA PATRIOT Act further required the United States government to focus on (1) the utilization of biometric technology; and (2) the development of tamper-resistant documents readable at ports of entry. Furthermore, the legislation required that entry and exit

data be interfaced with law enforcement databases “for use by Federal law enforcement to identify and detain individuals who pose a threat to the national security of the United States.”³¹

The entry and exit system was addressed again in 2002, with the passage of the Enhanced Border Security and Visa Entry Reform Act of 2002.³² This legislation requires the Attorney General and the Secretary of State to, among other things, (1) implement, fund, and use a technology standard under section 403(c) of the USA PATRIOT ACT in United States ports of entry and at consular posts abroad; (2) establish a database containing the arrival and departure data from machine-readable visas, passports, and other travel and entry documents possessed by aliens; and (3) make interoperable all security databases relevant to making determinations of admissibility under the immigration statute.³³

In order to carry out its mandate, Congress placed the responsibility of developing an entry and exit registration system into the hands of the DOJ. According to the DOJ, the NSEERS program served as “the first step toward the development of a comprehensive entry-exit system applicable to virtually all foreign visitors.”³⁴ However, the NSEERS program as initiated by DOJ is quite different from the program initially proposed by Congress via statute, because the NSEERS program targeted visitors from Muslim-majority countries and went beyond tracking the arrivals and departures of non-citizens.

While the NSEERS program itself was publicly featured as a component of a comprehensive entry and exit system, the statutory foundation for the program has also been linked to section 263 of the Immigration and Nationality Act (INA).³⁵ The statutory provision

contained within section 263 of the INA contains a specific provision on the registration of special groups. Under the INA, the Attorney General is permitted to require registration for several classes of non-immigrants including (1) alien crewmen, (2) holders of border-crossing identification cards, (3) aliens confined in institutions, (4) aliens under order of removal, (5) aliens who are or have been on criminal probation or criminal parole within the United States, and (6) aliens of any other class not lawfully admitted to the United States for permanent residence.³⁶ None of these classifications allow for the selective enforcement of registration and mistreatment of non-immigrants based on national origin or religion. Notably, the NSEERS program has been held by many courts to be consistent with the scope of INA section 263.³⁷ In his public remarks announcing the NSEERS program, former Attorney General John Ashcroft stated that

[t]he responsibility to establish the National Security Entry-Exit Registration System is already contained in U.S. law. Some of the provisions date to the 1950s; others were added by Congress in the 1990s. Congress has mandated that, by 2005, the Department of Justice build an entry-exit system that tracks virtually all of the 35 million foreign visitors who come to the United States annually. This registration system is the first crucial phase in that endeavor and will track approximately 100,000 visitors in the first year.³⁸

Stages of NSEERS

The NSEERS program was implemented in two stages: first through registration at designated ports of entry (POE), and second through a domestic or call-in registration. POE registration focused on the tracking of certain non-immigrants entering and leaving the country.³⁹ Those required to register at POE included: all nationals of Iran, Iraq, Libya, Sudan and Syria; nonimmigrant aliens whom the State Department determines to present an elevated national security risk, based on criteria reflecting current intelligence; and aliens identified by INS inspectors at the port of entry, using similar criteria.⁴⁰ Individualized criteria were laid out in an

INS memorandum to assist inspecting officers with making determinations of whether a non-immigrant should be subject to special registration.⁴¹ The factors identified in the memorandum were: 1) whether the person has made unexplained trips to any of the several listed countries, 2) whether the person has previously overstayed an authorized period of admission, or 3) whether “the nonimmigrant alien’s behavior, demeanor, or answers indicate that the alien should be monitored in the interest of national security.”⁴² When registering at a designated POE, individuals are fingerprinted, photographed, and subject to extensive questioning.⁴³ In addition to registering, the government mandated that all individuals - who register under NSEERS and remain in the United States for thirty days or more – to notify the government of any change of address, employment or school.⁴⁴ Non-immigrants who registered under the POE registration requirements need to complete a departure check when they leave the country.⁴⁵ Previously, POE registrants were also required to report to a local immigration office for a “30 day” interview if they remained in the United States for more than thirty days, and also for an annual interview if they remained in the United States for more than one year.⁴⁶

The second stage of NSEERS, domestic or call-in registration, was the most controversial part of the program.⁴⁷ It was implemented by former Attorney General John Ashcroft on November 6, 2002 through publication in the Federal Register.⁴⁸ Distinct from POE registration, “call-in” registration was limited to certain males who were nationals and citizens of twenty-five countries who were admitted and last entered the United States as a non-immigrant.⁴⁹ Call-in registration was rolled out in four stages through publication in the Federal Register.⁵⁰ Non-immigrant males from Iran, Iraq, Libya, Sudan, and Syria made up the first group subject to call-in registration.⁵¹ The second group of registrants subject to call-in comprised non-immigrants

from Afghanistan, Algeria, Bahrain, Eritrea, Lebanon, Morocco, North Korea, Oman, Qatar, Somalia, Tunisia, United Arab Emirates, and Yemen.⁵² Under the third group, registration was required of non-immigrants from Saudi Arabia and Pakistan.⁵³ Finally, the fourth group required to register was comprised of non-immigrants from Bangladesh, Egypt, Indonesia, Jordan, and Kuwait.⁵⁴ Notably, individuals from the aforementioned countries who were not subject to call-in registration included females, United States citizens, lawful permanent residents, non-immigrants on diplomatic “A” or “G” visas, certain asylum applicants, and those already granted asylum.⁵⁵ Ironically, individuals who entered the United States without inspection were not required to register as they did not meet the government’s requirement of having been last admitted as a non-immigrant visa holder.⁵⁶

As part of call-in registration, non-immigrants were subject to a series of processing requirements. For example, at special registration interviews, individuals were asked for their passports, other forms of identification, proof of residence, and proof of employment or matriculation.⁵⁷ Additional information was required of different non-immigrants based on their immigration status and responses to questions. For instance, some people were asked for a copy of their lease or rental agreement, utility bill, and any other proof of residence.⁵⁸ Those on employment-based visas were asked for payroll stubs and a copy of their employment contract.⁵⁹ Finally, individuals on student visas were asked for their class schedule, official notification of grades, class or yearbook picture, student identification card, and evidence of participation in extracurricular activities.⁶⁰ According to the government, the list of verifying documents could be expanded. After registrants provided the immigration officer with the necessary documentation, the officers would ask the registrants numerous questions under oath.

Previously, call-in registrants who remained in the United States for more than one year after the date they registered were required to appear for an annual interview.⁶¹

In 2003, the NSEERS program was transferred from the Department of Justice to the Department of Homeland Security. Effective March 1, 2003, INS ceased to exist and the immigration functions formally held by INS were delegated under the Homeland Security Act of 2002 to three bureaus in the newly created Department of Homeland Security (DHS).⁶² The three bureaus include: the Immigration and Customs Enforcement (ICE), the Citizenship and Immigration Services (CIS) and Customs and Border Portal (CBP).⁶³

Penalties for Failure to Comply

There are several penalties associated with the NSEERS program.⁶⁴ For example, if a designated person fails to comply with NSEERS after admission, he will be considered to have failed to maintain status under section 237(a)(1)(C)(i) of the Immigration and Nationality Act.⁶⁵ An exception applies if the individual can show that his failure to register was “reasonably excusable or not willful.”⁶⁶ Notably, there is a “presumption of inadmissibility” for “[a]ny nonimmigrant subject to special registration who fails, without good cause, to be examined by an inspecting officer at the time of his or her departure and to have his or her departure recorded by the inspecting officer.”⁶⁷ According to the regulations, such individuals shall “be presumed to be inadmissible [upon re-entry] under, but not limited to, section 212(a)(3)(ii) of the Immigration and Nationality Act, as a person whom the Secretary of Homeland Security has reasonable grounds to believe, based on the alien’s past failure to conform with the requirements for special registration, seeks to enter the United States to engage in unlawful activity.”⁶⁸ In addition, there

are criminal consequences for non-compliance with NSEERS. A failure to register can result in misdemeanor charges. The statute provides that anyone required to apply for registration who “willfully fails or refuses” to register “shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed \$1000 or be imprisoned, not more than six months, or both.”⁶⁹

Although the official call-in of males from the listed countries provided in the Federal Register has been “suspended,” non-immigrants who did not comply with any aspect of domestic or POE registration requirement are still required to report for registration and are subject to the penalties for failure to register. Specifically, the interim rule states, “[t]his rule does not change any of the penalties for failing to comply with the special registration provisions. Moreover, this rule does not excuse any prior failure to comply with special registration provisions.”⁷⁰ Furthermore, although the interim rule suspended the automatic 30-day and annual re-registration requirements,⁷¹ the rule did not amend procedures for special registration at POE or departure registration, thus leaving many aspects of the NSEERS program intact. Additionally, DHS explicitly reserved the right to notify individuals whenever additional reporting is required.⁷² The interim regulation also permits the DHS Secretary to “impose such special registration, fingerprinting, and photographing requirements upon nonimmigrant aliens who are nationals, citizens, or residents of specified countries or territories (or a designated subset of such nationals, citizens, or residents) who have already been admitted to the United States or who are otherwise in the United States.”⁷³ Arguably, this provision provides the DHS with authority to re-ignite call-in registration in the future.

Concerns over NSEERS

DHS reasoned that suspending the special registration program was appropriate in light of the deployment of United States-Visitor and Immigrant Status Indicator Technology (US-VISIT).⁷⁴ The suspension rule itself stated, “[a]s DHS develops the larger system mandated by Congress, to be called US-VISIT, it will integrate the NSEERS registration currently in use.”⁷⁵ According to former Attorney General Ashcroft and ICE, NSEERS was meant to be temporary until the government had a chance to fully launch US-VISIT.⁷⁶ US-VISIT was promoted as requiring all non-immigrants regardless of the country of residence to be subject to registration requirements such as biometric scans, photographs and fingerprinting.⁷⁷ Notably, there were a number of statements made by former Undersecretary for Border and Transportation Security in DHS, Asa Hutchinson, and former Homeland Security Secretary, Tom Ridge, that NSEERS would be phased out and replaced by US-VISIT.⁷⁸ In announcing the interim rule, former Undersecretary Hutchinson stated, “[t]oday’s announcement that the domestic NSEERS interview requirement will be phased out is another important step forward by the Department of Homeland Security to maintain the integrity and security of our nation’s immigration systems. [...] This change will allow us to focus our efforts on the implementation of US-VISIT while preserving our ability to interview some visitors when necessary.”⁷⁹ Despite these earlier statements and the implementation of US-VISIT, NSEERS remains alive and well.

There are legitimate concerns over the remaining components of the NSEERS program and its effects, which -over time- have greatly impacted individuals, families and communities. For instance, spouses of U.S. citizens have been denied lawful permanent resident (green card) status as a matter of discretion based on a “willful” failure to register for NSEERS.⁸⁰ Notably,

whether the government has met the requisite “willfulness” before charging and removing individuals for “willfully” failing to register is unsettled. While “willfulness” requires that a decision be “knowing and voluntary,” it is unclear practically speaking whether the government has provided enough facts to make a finding of “willful failure” in every instance where an individual has been sanctioned for non-compliance with NSEERS.⁸¹ According to one attorney, “[u]nder the circumstances of this [NSEERS] program, possibly with the exception of foreign students, there was simply insufficient notice to those affected to make a finding of willfulness.”⁸²

A related concern is the lack of awareness by the public and affected communities about the NSEERS rule and remaining requirements. One immigration attorney notes, “when NSEERS came into effect, there was no systematic notice given; the exception being the foreign students, since the responsibility of alerting the students of registration procedures fell on the school.”⁸³ In fact, many non-immigrants were either not aware of special registration or were too afraid to register and in some cases believed the law was not applicable to them.⁸⁴ In one instance, an Arab Christian man contacted the ADC because he did not register during the call-in registration period and is now facing possible removal for failure to register.⁸⁵ He was mistakenly under the impression that special registration is only required for *Muslim* non-immigrant males.⁸⁶

Another related concern is whether the government’s release of special registration requirements through publication in the Federal Register constitutes adequate notice. Most people do not read the Federal Register, and even if someone happens to peruse it, he might have a difficult time understanding the numerous requirements, notices and deadlines. Furthermore,

the American Civil Liberties Union has argued that the type of notice given was inconsistent with the legal requirements for notice under the Administrative Procedure Act and did not constitute legally sufficient assurance that actual notice, or for that matter, constructive notice had been given to registrants.⁸⁷ Although constructive notice requires that notice be provided so that the matter at the bare minimum is brought to the attention of the individual it is directed towards, the requirements as posted by the Federal Register did not meet this standard.⁸⁸ Moreover, the media and some of DHS's own officers advertised that NSEERS had ended. In newspapers across the country, reports were also made that NSEERS was abolished.⁸⁹

Meanwhile, public interest groups and community-based organizations, such as the Asian American Legal Defense Fund, National Lawyers Guild, American Civil Liberties Union, American Immigration Lawyers Association, and American-Arab Anti-Discrimination Committee attempted to educate affected communities about the program.⁹⁰ Testifying before the House Judiciary Committee, Mr. James Zogby stated that, "due to inadequate publicity and INS dissemination of inaccurate and mistranslated information, many individuals who were required to register did not do so. Many who were required to register in the call-in program were technically out of status due to long INS backlogs in processing applications for permanent residency."⁹¹ Government officials have even noted that during the first year of call-in registration, notices sent out were at times inaccurate and there were mistranslations of the Arabic language.⁹² Moreover, the government itself has noted that there were problems with the dissemination of special registration requirements and proceeded to reprint notices. Clearly, the government's dissemination of notice regarding the NSEERS requirements was inadequate.⁹³

Legal Challenges in Courts

Since its inception in 2002, there have been a number of legal challenges brought to the federal courts by petitioners detained and/or placed under removal proceedings as a result of the special registration program. Petitioners have raised legal challenges based on constitutional, statutory and regulatory grounds. In many of these cases, courts have held that the power to remedy the hardships caused by NSEERS rests in the hands of the political arms of the Executive and Legislative Branch.⁹⁴

Many of the NSEERS cases reviewed for this white paper involve individuals who were appealing removal decisions from the Immigration Judge (IJ)⁹⁵ and Board of Immigration Appeals (BIA).⁹⁶ While the courts have held that noncitizens are entitled to equal protection of the law under the Fifth Amendment of the Constitution,⁹⁷ nearly every Circuit Court of Appeals has found that the NSEERS program did not violate the Equal Protection Clause.⁹⁸ Similarly, many federal courts of appeals have rejected claims of selective enforcement based on national origin concluding that the NSEERS program lacked the requisite “outrageousness” to meet the *Reno* standard (limiting selective prosecution claims to “the possibility of a rare case in which the alleged basis of discrimination is so outrageous that the foregoing considerations can be overcome.”)⁹⁹ Instead, many courts have held that, with regards to NSEERS, judicial deference to the Executive Branch is “especially appropriate.”¹⁰⁰ Courts have further found that the NSEERS program did not violate the Fourth, Fifth, and Sixth Amendments of the Constitution.¹⁰¹ Moreover, many courts have cited to the registration statute to conclude that the Attorney General has broad powers to design programs such as NSEERS.¹⁰² Such cases have

further concluded that the NSEERS program serves a legitimate objective of tracking nationals from certain countries to “prevent terrorism.”¹⁰³

While the Courts have consistently ruled that the NSEERS program did not violate the Constitution, five critical observations about these cases should be noted as the Executive Branch and Legislature consider the program’s future. Moreover, these observations help demonstrate the failure of NSEERS to remain truthful to its original mission. First, to the extent that the courts conclude that “preventing terrorism” is a legitimate purpose served by the NSEERS program, the analysis by the 9-11 Commission, security experts, select members of Congress, select former and current members of DHS, and publicly available information seem to conclude the contrary.¹⁰⁴ Individuals who are likely to comply with registration requirements are not those who threaten our national security and evade our laws. As reported by the New York Times, “James W. Ziglar, who was commissioner of the Immigration and Naturalization Service before it was subsumed into the Department of Homeland Security, said he and members of his staff had raised doubts about the benefits of the special registration program when Justice Department officials first proposed it. He said he had questioned devoting significant resources to the initiative because he believed it unlikely that terrorists would voluntarily submit to intensive scrutiny.”¹⁰⁵ Mr. Ziglar continued, “[t]o my knowledge, not one actual terrorist was identified. But what we did get was a lot of bad publicity, litigation and disruption in our relationships with immigrant communities and countries that we needed help from in the war on terror.”¹⁰⁶ Meanwhile, the government has reasoned, “[w]e have caught suspected terrorists under NSEERS. While they may not be charged with terrorism grounds of inadmissibility or removability, that is not an indication of whether terrorists were caught. A non-immigrant

visitor, who overstays a visa, is present without inspection, commits a crime or fraud is just as removable under those grounds as terrorism grounds.”¹⁰⁷ The purpose of NSEERS was to help discover suspected terrorists; however, most of the cases involved visa overstays, and none of the individuals involved with these cases were charged with terrorism-related crimes. One critic of special registration noted, “[i]ts goals have been contradictory: gathering information about non-immigrants present in the United States, and deporting those with immigration violations. Many non-immigrants have rightly feared they will be detained or deported if they attempt to comply, so they have not registered.”¹⁰⁸

Second, a review of the cases is essential to understanding who was affected by the NSEERS program. A review suggests that most of the individuals who legally challenged the NSEERS program entered the United States lawfully, diligently complied with the NSEERS program, were predominantly male and Muslim, and had an immigration violation such as overstaying a visa that came to the attention of the immigration agency after complying with NSEERS.¹⁰⁹ For example, Kandamar was a native and citizen of Morocco who overstayed his B-2 visitor visa and duly registered.¹¹⁰ Imtiaz Ali is a native and citizen of Pakistan who overstayed his visitor visa and complied with the NSEERS program.¹¹¹ Karayama Hadayat is a native of Indonesia who overstayed his B-2 visa and registered with the NSEERS program. Notably, Hadayat had a family immigration petition pending at the United States Citizenship Immigration Service.¹¹² Abu Hasan Mahmud Parvez is a native and citizen of Bangladesh who entered the United States on a diplomatic visa, and thereafter applied for and was granted student status.¹¹³ Parvez married a Bangladeshi woman and together they had a United States citizen son.¹¹⁴ Parvez was placed in removal proceedings after complying with the NSEERS

program.¹¹⁵ Muhammad M. Mana Ahmed is a native and citizen of Yemen who entered the United States on a B-2 visa.¹¹⁶ He overstayed his visa, and had a family immigration petition pending at the United States Immigration Services.¹¹⁷

Third, the factual histories of the individuals identified above suggest that the immigration agency did not, as a practical matter, focus their scarce resources on high-risk individuals. Many individuals impacted by the NSEERS program do not appear to have terrorism charges or criminal histories. Notably, many of these individuals had meaningful family, business and cultural ties to the United States. In November 2000, former INS Commissioner Doris Meissner issued an important memo on prosecutorial discretion, a terminology that refers to an officer's decision to refrain from or exercise enforcement. According to the memo, "[t]he 'favorable exercise of prosecutorial discretion' means a discretionary decision not to assert the full scope of the INS' enforcement authority as permitted under the law. Such decisions will take different forms, depending on the status of a particular matter, but include decisions such as not issuing an NTA [...]."¹¹⁸ The memo also identifies several factors that officers should consider when determining whether to enforce the law against a particular individual, such as length of residence in the United States, criminal history, humanitarian concerns, whether the alien is likely to be eligible for future relief, cooperation with law enforcement, among other factors.¹¹⁹ Recognizing that targeted enforcement is also cost-effective, the 2000 memo also identifies the objective of "effective management of limited government resources."¹²⁰ Since this time, the agency has issued a number of memos specific to the NSEERS program.¹²¹

A review of the Meissner memo suggests that former INS officers failed to exercise the

most basic of prosecutorial discretion by making a decision to arrest and place into removal proceedings thousands of individuals who voluntarily complied with the NSEERS program, had no criminal history and to the contrary had strong equities, such as family members living in the United States. Meanwhile, since the inception of special registration, attorneys across the country, often working pro bono, have worked tirelessly to defend well-meaning registrants placed in removal proceedings. In a majority of NSEERS cases, the government has penalized visa overstayers harshly.¹²² Moreover, that nearly every individual identified was Muslim and male should be morally and socially troubling.

Fourth, even if one were to agree with the courts that a nationality and gender based registration program is Constitutional, the Executive's policy moving forward should not rest on the bare Constitutional minimum. The United States government has an important decision to make about what kind of America it wants to be. Ostracizing and profiling people have never been a sound method for preserving democracy and it will not secure the borders of the United States. Many have stated that "[t]here is a value in Entry-Exit but it has to be respectful of some general rights—equal protection and profiling is no way to go about initiating this entry-exit program."¹²³ Greg Nojeim, formerly of the American Civil Liberties Union, said it best when he stated before the U.S. Commission on Civil Rights, "I think it goes to who we are as a nation, what our values are, how we're going to balance freedom and security over the long haul, not for the period that our troops are in Afghanistan or in Iraq."¹²⁴

Fifth, although the DOJ advised registrants that "[they] may be represented at [their] own expense by the legal counsel of [their] choice" during registration proceedings,¹²⁵ the American

Immigration Lawyers Association, the New York Advisory Committee to the U.S. Commission on Civil Rights and Members of Congress noted ICE officers' refusal to grant individuals access to their attorneys during special registration interviews and questioning.¹²⁶ Interestingly, one practitioner noted that "when some components of NSEERS were suspended, and during late registration, there were places such as the Washington D.C. District Office where ICE officers still would not allow attorneys to attend the registrant's interviews, although they allowed access to counsel during the earlier actual periods of registration."¹²⁷ While the INA does not guarantee appointed, paid representation in an immigration proceeding,¹²⁸ Fifth Amendment due process rights may be violated by denial of the right to obtain legal counsel.¹²⁹ The regulations also confirm that individuals have a right to be represented by counsel at examinations by immigration officers, such as the NSEERS special registration: "[W]henver an examination is provided for in this chapter, the person involved shall have the right to be represented by an attorney."¹³⁰

POLICY

The notion that simply by aggressively enforcing immigration laws you would catch terrorists -I think -is wrong. I think you will catch immigration violators, people whose visas have lapsed. The idea that you should just look at all young men from Muslim countries is ridiculous. Al-Qaeda are intelligent people. If you create a profile, what they are going to do is find people that do not fit the profile. There is no national profile that offers the kind of protection that we need. What we need is good intelligence.

-- Telephone Interview with Alden, Edward, Senior Fellow, Council on Foreign Relations (Oct. 24, 2008).¹³¹

The special registration program has raised a number of public policy questions. Public outcry, governmental criticism of the program, and judicial challenges demonstrate that the program has not necessarily benefited the United States. Organizations such as the American Immigration Lawyers Association, Migration Policy Institute, National Immigration Forum, American-Arab Anti-Discrimination Committee, Asian American Legal Defense Education Fund, Iranian-American Bar Association, Arab American Institute, Rights Working Group, the Lawyers Committee for Human Rights (now Human Rights First), have criticized the NSEERS program and documented increased profiling and discriminatory treatment towards Arabs, South Asians and Muslims.¹³² According to a report by the American Immigration Law Foundation, rather than drawing communities together and encouraging a shared community responsibility, government projects such as NSEERS only serve to further alienate a community that is needed to truly win "the war on terrorism."¹³³ For years, legal practitioners, civil rights, religious, immigration and civil liberties organizations, as well as affected communities called for a repeal or complete termination of the NSEERS program through administrative, legislative and judicial means but with very little success.¹³⁴

Profiling as a Counterterrorism Tool

Polymakers and security experts have argued that NSEERS failed to meet the stated objective of preventing terrorism. In an interview with Benjamin Johnson, he noted that “[t]he assumption that the countries identified in the program have a monopoly on terrorism...is an assumption that is really incorrect and in terms of the community is really destructive.”¹³⁵ According to Mr. Johnson, “[t]he border should not be your first line of defense; it should be your last. ...NSEERS should be refocused. We ought to take away profiling.”¹³⁶

The fact that the program was not having the professed success the government promised made it extremely difficult for the public to believe that NSEERS was a well-founded program. Most people could not understand the government’s formula for selecting the countries subjected to the NSEERS program.¹³⁷ According to Edward Alden, “there was no evidence the program was working.”¹³⁸ Similarly, Juliette Kayyem, a terrorism expert who is currently serving as Assistant Secretary for Intergovernmental Programs at the Department of Homeland Security, questioned the government’s ability to combat terrorism through the NSEERS program and noted early on that, “the pure accumulation of massive amounts of data is not necessarily helpful, especially for an agency like the INS that already has problems keeping track of things.”¹³⁹ Kayyem referred to special registration as basically “an immigration sweep” and stated that “the idea that [NSEERS] has anything to do with security, or is something the government can do to stop terrorism, is absurd.”¹⁴⁰ Meanwhile, in response to a congressional inquiry about the number of terrorists identified through the NSEERS program and related data, DHS responded that the numbers of NSEERS charged with a terrorism-related ground of removal is classified and unavailable to the public.¹⁴¹

Congressional Action

In a series of letters dated from December 2003 through January 2007, members of Congress have raised serious questions concerning NSEERS with DHS.¹⁴² These letters question the effectiveness of the NSEERS program and its impact on both local communities and foreign allies. On December 23, 2002, Senators Russell Feingold, Edward M. Kennedy, as well as Representative John Conyers, Jr. wrote a letter to former Attorney General Ashcroft expressing “grave doubts about whether the INS’s implementation of NSEERS had struck a proper balance between securing our borders on the one hand and respecting civil liberties of foreign students, businesspeople, and visitors who have come to our nation legally on the other hand.”¹⁴³ The letter included a very compelling story about a sixteen-year-old boy admitted into the United States on a student visa. The young boy “was separated from his pregnant mother by CIS officers, even though he is seeking permanent residency to be able to join his mother, who is a permanent resident, and stepfather, who is a US citizen.”¹⁴⁴ The story of this teenager is very familiar among individuals targeted by special registration and many have voiced their disappointment with the government’s handling of the issue. In the letter, Members of Congress urged Attorney General Ashcroft “to suspend further implementation of the National Security Entry-Exit Registration System...until Congress and the Department [could] conduct a complete and thorough review.”¹⁴⁵

Some members of Congress also introduced legislation to address the NSEERS program. The Civil Liberties Restoration Act (CLRA) was developed in 2003 as a response to growing concerns over the wave of federal immigration policies instituted after 9/11. The CLRA was

introduced concurrently in the Senate and House of Representatives in 2004 and reintroduced in the House in 2005.¹⁴⁶ One section of the CLRA terminates the regulations associated with NSEERS and further enables those placed in removal proceedings as a consequence of complying with the program to have their cases “administratively closed,” if they were placed in removal proceedings solely for failure to comply with NSEERS requirements or if they complied with NSEERS and either had a pending application for an immigration benefit or were eligible to apply for such a benefit.¹⁴⁷ The CLRA provision specifically excludes such relief for individuals who fall under the security or criminal-related grounds of inadmissibility or deportability.¹⁴⁸

The legislation also provides individuals who received a final notice of removal with the opportunity to reopen their cases and apply for relief if they are otherwise eligible for such relief.¹⁴⁹ The CLRA includes “Sense of Congress” language on prosecutorial discretion in which Congress lays out the responsibility of DHS to uphold the law while at the same time to take into consideration factors to consider when deciding to enforce the law against a non-immigrant.¹⁵⁰ Notably, section 302(c) of the CLRA lays out factors DHS must consider when exercising discretion, including: immigrants status; length of residence in the United States; criminal history; humanitarian concerns; likelihood of achieving enforcement goals by other means; eligibility for other relief; community attentions; and DHS resources.¹⁵¹ In June 2005, the House Judiciary Committee’s Subcommittee on Immigration, Border Security, and Claims held an oversight hearing on four provisions found in the CLRA.¹⁵² At the hearing, Representative Marty Meehan raised the issue of NSEERS and mentioned his outstanding request to DHS for a list of individuals impacted by NSEERS with pending applications for adjustment. He identified the sections in CLRA that would terminate the NSEERS program, provide relief for certain

individuals who complied and were placed in removal proceedings, and codify the existing DHS memo on prosecutorial discretion.¹⁵³ The CLRA was never enacted into law.

Beyond the Border

It is inevitable that the domestic policy, even of a sovereign nation, will significantly impact its policy abroad. When making decisions at home, the United States must take notice of the impact those decisions will have on its relations with other nations. The impact of NSEERS on foreign policy is striking. A Staff Monograph from the National Commission on Terrorist Attacks Upon the United States (9-11 Commission) reveals that “[t]here was significant opposition to the NSEERS program from some U.S. government officials, who feared the program would offend countries that were U.S. allies in the global war on terror. State personnel we interviewed said that NSEERS did harm our relations with foreign countries whose citizens were subject to its registration requirements. FBI Director Mueller said it came at a cost. Documents we reviewed, including correspondence from foreign countries’ representatives, indicate that some foreign governments were strongly opposed to having their nationals subject to NSEERS registration.”¹⁵⁴ In response, “[o]n March 31, 2003, ... the White House sent out a ‘global message’ on NSEERS from the Homeland Security Council to the executive secretaries of State, Justice, Homeland Security, the National Security Council, the Office of Management and Budget, the White House Domestic Policy Council, the Office of the Vice President, and the President’s Chief of Staff. The purpose of this message was ‘to explain responsibilities and ramifications of NSEERS to foreign governments’ and avoid misunderstandings with foreign partners.”¹⁵⁵ Clearly, American domestic policy affects its relationship with foreign allies. Therefore, it is essential to the American interest that those relationships be strengthened and maintained.

NSEERS and other programs that target the Arab, South Asian and Muslim communities for heightened scrutiny have been well publicized abroad, feeding a growing perception that Arab, South Asian and Muslim visitors are not welcomed in the United States. As a result, programs implemented after September 11, 2001, have caused a significant decrease in the number of people that travel to the United States.¹⁵⁶ The Travel Industry Association, which works closely with the United States government, has stated that the United States continues to struggle “to regain the millions of travelers we have lost since 9/11.”¹⁵⁷ In conversations with Edward Alden, Senior Fellow at the Council of Foreign Relations, he noted that because of NSEERS, “traveling to the United States continues to be unnecessarily humiliating [for] some foreign nationals from Muslim countries, who are seeking entry to work, study, and for other limited purposes.”¹⁵⁸ It is important that the government recognizes that NSEERS and other post 9/11 policies alienate groups of non-immigrants whose admission the United States actually seeks to advance. In fact, there are INA categories which promote the admission of non-immigrant professionals, students, athletes, and individuals of “extraordinary abilities and achievements.”¹⁵⁹ Temporary visas do play an important role in a healthy immigration system that contributes to a dynamic and fluid economy, and the grant of temporary visas demonstrates that the United States wants to promote immigration.

Stories

There are many stories of students and professionals impacted by NSEERS. Dr. Fiaz Bhora is a Muslim and native of Pakistan who initially came to the United States through a training program reserved for foreign surgeons of extraordinary talent. By 2000, Dr. Bhora was

selected as “one of just 120 surgeons in the United States selected each year to train in cardiothoracic surgery.”¹⁶⁰ In July 2002, upon completing his residency program, Dr. Bhora returned to his home in Karachi, Pakistan to await his work visa approval. In the spring of 2003, however, Dr. Bhora found himself in an unfortunate situation. “Expecting it would take him no more than 30 days to receive a new visa and return to Los Angeles to take up his position”¹⁶¹ as a member of the UCLA faculty, Dr. Bhora waited over seven months for the American Consulate in Islamabad, Pakistan to determine whether he would be granted readmission to the United States. Instead of performing operations on the hearts of humans, Dr. Bhora became a victim of NSEERS.¹⁶² In an article discussing Dr. Bhora’s situation, “[t]oday, every time [Mr. Bhora] leaves the country, he must do so through certain airports where he can ‘check out’ with U.S. border officials. He went on holiday with his wife last year to Costa Rica, and when he returned he was pulled aside into secondary inspection while the officer emptied his wallet, writing down the names and numbers from every scrap of paper.” Dr. Bhora recounted, “He knew I was a cardio-thoracic surgeon who had left for a week on vacation, but it was as though I was entering the country for the first time.”¹⁶³

United States colleges and universities attract some of the world’s most talented individuals for training. For example, Mr. D was a 19 year-old athlete from Algeria, who came to the United States on [a] student visa to play tennis at Western Michigan University.”¹⁶⁴ As a foreign student, Mr. D was subject to NSEERS as a condition for study in the United States.¹⁶⁵ Due to a car accident, he complied one day past the deadline for Algerian Nationals to special register. Although documents were available to show the circumstances of the one day delay, the local CIS office charged the student with failure to comply with NSEERS and placed him in

removal proceedings. Being distraught by this experience, the student finished up the semester and returned to Algeria.¹⁶⁶

*Yusef's Story*¹⁶⁷

When the domestic NSEERS was first implemented in November 2002, I was an undergraduate student at a public university in the middle of the United States. In the beginning, the implementation of the program did not elicit much talk or buzz on my campus since there were simply not many students from the countries listed under Group 1. It was not until the implementation of Groups 2, 3, and 4 that the impact of the program started to settle in since the registration impacted a greater number of students. The foreign Arab and Muslim students were puzzled by the nature and structure of the program, since they knew they were law-abiding residents, excelling in their classes, and had not committed any wrongdoing. Some were even wondering if the registration was only a preview of a bigger plan that would include rounding the registrants and interning them in camps. All Arab and Muslim students at my school registered, since they did not want to jeopardize their studies. Most importantly, they knew that they had nothing to hide or be afraid of.

NSEERS had a chilling effect on the level of activism and freedom of speech among these students. The perception that foreign students do not enjoy rights in the US became a reality with the registration, and the students felt they were treated as suspects. Many Arab and Muslim students became reluctant to join rallies or demonstrations for Palestine, to participate in peaceful protests against the war in Iraq, and to continue the outreach efforts made after 9/11 in local churches and high schools. The registrants were genuinely worried they were being tracked down by the US government, and so felt that any level of peaceful activism may taint them. I felt this self-censorship was reminiscent of what these students had probably faced in their home countries, and they certainly did not expect that this would be the case in America, specifically because of the values and principles that the United States was founded upon.

The International Student Office (ISO) on campus reached out to the student 'registrant population' and offered to drive the students in vans to the INS office in Fort Mine- an hour drive from campus. I signed up for a van scheduled to depart on January 24, 2003. A week before registration, I got all of the necessary documents ready, and placed them in a file, as if I was attending a job interview. I went to Banana Republic to buy a black turtleneck sweatshirt, and a pair of "fashionable jeans." I probably wanted to look American, and convey to the officers that I am really just an undergraduate student, with the very same aspirations of a 21-year-old American. I may have been born and raised in a country listed under NSEERS, but that does not mean that I am any different from my American peers at school.

In the early morning on that cold January day, 10 to 12 students gathered around the van,

and were waiting for Jane, the ISO advisor. During the one-hour drive, the atmosphere in the van was electrifying and tense: there were some nervous laughs here and there, but the mood was definitely not joyful. Our advisor tried to lighten up the situation by telling us that it will be fine, to which many of us responded: "yes, of course." I think we were trying to remain calm, but were probably nervous deep inside, in spite of the fact we knew we had done nothing wrong, and had heard about the procedures to take place at the INS office. We also felt safe that we had Jane, an American, with us, and her presence meant a lot to the students. When we got to the INS office, what struck me was the sudden diversity. The room included students from neighboring cities attending community colleges. I had not seen such a big concentration of individuals who look Middle Eastern and speak Urdu and Arabic—all in a governmental building in a small town in Middle America!

We registered our names at the front desk, and waited to hear the immigration officers call our names before having the much-dreaded interview. We would wish one another "best of luck" when we went inside. There was also a sign of relief when the interview is over. I then heard my name, and proceeded to the room. The officer was a lady in her early 40s. I sat down, and she requested to see my official school transcripts, a letter from the school stating that I am in good standing, my course schedule for the semester, my rental/lease agreement, any utility bills, my passport, I-20, and I-94. She then asked me about my address overseas, my parents' names—who live overseas—, their addresses and dates of births. After incorporating all of this info into the database, she took my fingerprints, and a picture. When the interview was over, she assigned me a Finger Identification Number (FIN) and wrote it down on my I-94. At that point, I felt that I was reduced to a mere number, the infamous FIN, and that I was branded. The fingerprinting would later be implemented across the board to anyone coming in into the US, but then, it was only implemented to NSEERS registrants. I left the room, and the other students and Jane were anxiously waiting outside, wanting to hear what transpired inside. Most students got asked similar questions. Jane then reminded us that we would need to re-register a year after that date.

I went back to classes the next day, and did not talk about my experience with my classmates. I do regret not having been vocal about it, so that the student body would be informed about what foreign students from particular countries were going through. At least, in my campus, there seemed to have been a deafening silence on the subject, as if it never happened. Personally, it was not until a few years later when I attended law school that the NSEERS topic was brought up again. During my immigration law class, and immigration legal clinic, both professors were going over the registration program, and I would then provide the class with my personal experience. To my shock, none of my classmates had heard about it. To their shock and dismay, they could not understand why I had to go through such registration, because they viewed me as one of "them."

To this day, I wonder about the value, if any, that my personal info contributed to the government databases. The government was clearly after the wrong folks. Some of these folks

were international students, who have made it to the Dean's and Chancellor's lists, who have contributed to the diversity in their schools, who have broadened the horizons of their fellow American classmates and professors by enriching class debates with a different point of view on things, and by challenging and breaking stereotypes. NSEERS dashed the aspirations that foreign students had of being assimilated into the United States, since they were targeted and viewed as the "other," simply because they came from another country and that is in spite of their very similar aspirations and dreams for the future as the average Janes and Joes.

-Yusef, March 22, 2009

CONCLUSION AND RECOMMENDATIONS

The compelling stories and plights of those affected by NSEERS underscore the disparate impact special registration has had on United States domestic and foreign relations, and affected families and communities. In particular, the call-in registration included the explicit targeting of communities for heightened scrutiny. Using immigration law as a counterterrorism tool with racial profiling tactics has failed in the past, and continues to fail. Despite repeated assurances from the Department of Homeland Security that such policies are no longer used, the government continues to profile based on nationality and religion, the most recent example being Operation Frontline. NSEERS has also raised a number of public policy questions. Public outcry, governmental criticism of the program, and judicial challenges demonstrate that the program has not necessarily benefited the United States' domestic and foreign policy. Today, the United States is at a critical and historic juncture: a new Administration presents an opportunity to restore America's character, and reexamine and overhaul ill-conceived policies implemented in the last eight years. With this in mind, this white paper offers the following recommendations to the Obama Administration:

1. The Administration should terminate the NSEERS program and repeal related regulations.
2. Individuals who did not comply with NSEERS due to lack of knowledge or fear should not lose eligibility for or be denied a specific relief or benefit, to which they are otherwise eligible. Similarly, the Administration should provide relief to individuals who were placed in removal proceedings because of their participation in NSEERS.
3. The Administration should allow individuals impacted by NSEERS, who have been removed, to return to the United States, should they have a basis for re-entering the United States. Special consideration should be given to individuals with immediate family members living in the United States and/or those with pending benefits applications.

4. The Administration should eliminate programs that target people based on ethnic origin, race, nationality, religion and/or gender. The Administration should insure that agencies adhere to a standard of individualized suspicion.
5. Upon termination of the NSEERS program, the Administration should issue a formal apology to foreign visitors subject to the NSEERS program, in order to rectify the impression left on many affected communities impacted by the special registration program. The apology should be issued through a press release and a formal letter posted on the website of the Department of Homeland Security. The letter should explain that the NSEERS program has been terminated and the reasons for the complete suspension of the program. The government should clarify that ethnic origin, race, nationality, religion and/or gender alone are not a sufficient basis of criteria for identifying terrorists.
6. With transparency being a pillar of the current Administration, DHS should release the number of terrorists identified through the NSEERS program and related data, in order to assess the government's professed success of the program.

TABLE OF AUTHORITIES

LAW	TITLES	EFFECTIVE DATE
TITLE 8, CODE OF FEDERAL REGULATIONS PROVISIONS		
8 C.F.R. Part 264.1	Registration and fingerprinting	Dec. 2, 2003
8 C.F.R. 264.1(f)	Registration, fingerprinting, and photographing of certain non- immigrants	Sept. 11, 2002
INA PROVISIONS		
INA § 261	8 U.S.C. 1301 Aliens seeking Entry; Contents	Oct. 24, 1988
INA § 262	8 U.S.C. 1302 Registration of Aliens	Apr. 01, 1995
INA § 263	8 U.S.C. 1303 Registration of Special Groups	Sept. 30, 1996
INA § 264	8 U.S.C. 1304 Forms of Registration and Fingerprinting	Sept. 30, 1996
INA § 265	8 U.S.C. 1305 Notices of Change of Address	Oct. 24, 1988
INA § 266	8 U.S.C. 1306 Penalties	Sept. 30, 1996
KEY LEGISLATION PROVISIONS		
IIRIRA or IIRAIRA	Illegal Immigration Reform and Immigrant Responsibility Act of 1996.	Sept. 30, 1996

USA Patriot Act of 2001	Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001.	Oct. 26, 2001
DMIA	INS Data Management Improvement Act of 2000	Jun. 15, 2000
EBSVERA	Enhanced Border Security and Visa Entry Reform Act of 2002	May. 14, 2002

RESOURCE PAGE**AMERICAN-ARAB ANTI-DISCRIMINATION COMMITTEE**
[HTTP://WWW.ADC.ORG/](http://www.adc.org/)

NSEERS Resource Information Center
http://www.adc.org/index.php?id=3077&no_cache=1&sword_list%5B%5D=nseers

ADC & Yale Law School Joint Press Release Available at <http://www.adc.org/PDF/frontline.pdf>

“According to the records, ICE launched Operation Front Line (“Operation Front Line I”) in May 2004 to identify foreign nationals, both known and unknown to the U.S. government, who pose an elevated risk to national security. Operation Front Line I supported the government-wide Department of Homeland Security Interagency Security Plan that remained in effect through the Presidential Inauguration in January 2005. Pursuant to the initiative, ICE Headquarters analyzed data from immigration databases—including the National Security Entry-Exit Registration System (NSEERS), Student and Exchange Information System (SEVIS), and the United States Visitor and Immigrant Status Indicator Technology program (US-VISIT)—to identify persons with possible issues related to national security and immigration violations. ICE Headquarters then generated leads for ICE field offices to further develop violations and eventually remove persons in violation. From May 2004 to February 24, 2005, ICE investigated a total of 291 Operation Front Line I cases, resulting in 60 arrests.”

CONSTITUTION PROJECT
[HTTP://WWW.CONSTITUTIONPROJECT.ORG/](http://www.constitutionproject.org/)

The Use and Abuse of Immigration Authority as Counterterrorism Tool: Constitutional and Policy Considerations

http://www.constitutionproject.org/pdf/Immigration_Authority_As_A_Counterterrorism_Tool.pdf

The Constitution Project’s Liberty and Security Committee initiated this report in 2008 which offers an analysis of immigration initiatives and reforms instituted by the federal government following September 11th. The report takes the reader through the constitutional implications of these programs and the effects of governmental policies on the detriment of immigration. In particular, the Liberty and Security Committee focus on the implications of post 9/11 immigration policies and counterprograms tools on the free exercise of First Amendment rights and the Safeguards of the Fifth Amendment.

The paper documents the implementation of the National Security Entry-Exit Registration System (NSEERS), or “Special Registration,” in which “more than 80,000 noncitizens living in the United States were subject to special registration. Of these, 2,783 were detained for some period, and 13,400 were placed in deportation proceedings because of alleged visa violations. Many of those removed were individuals awaiting priority dates for family reunification. At the end of the interview process, the administration claimed to have identified eleven terrorism

'suspects.' To this day, however, none of those registered has been convicted of a terrorist crime."

Recommendations:

"Adopt legislation or regulations requiring that DHS may not selectively target foreign nationals for deportation or other immigration enforcement on the basis of race, ethnicity, religion, or political association or ideology."

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DHS and Immigration: Taking Stock and Correcting Course

By Doris Meissner and Donald Kerwin February 2009

The full report is available at www.migrationpolicy.org/pubs/DHS_Feb09.pdf

The Migration Policy Institute published this comprehensive report assessing the performance of the immigration agencies within the Department of Homeland Security. In the report, authors include a section summarizing the intersection of counterterrorism tools and immigration policies by DHS through programs such as the National Security Entry-Exit Program and the contradictory effect these tools have had on efforts to secure the borders while maintaining open doors.

"NSEERS has been widely criticized, not only by leaders of Muslim and Arab communities, but by the 9/11 Commission, congressional leaders, and independent experts. The reasons are familiar: it was ineffective in producing terrorism-related convictions; cost dearly in foreign relations terms; misdirected precious counterterrorism resources; and deeply alienated important immigrant communities in the United States whose cooperation is critical in countering terrorism.

Recommendations:

DHS must embrace its commitment to the policy of Secure Borders/Open Doors in practice. To that end, and with NSEERS and US-VISIT being essentially duplicative, DHS should end NSEERS, the post-9/11 special registration requirements for travelers from designated Middle Eastern countries.

New visa controls, intelligence and information-sharing, and US-VISIT have eclipsed NSEERS. Moreover, nonimmigrant aliens from any country may be registered on an individual basis if they meet criteria established by the Homeland Security Secretary or are referred by a consular officer or immigration inspector in the interest of law enforcement or national security.

NSEERS did not have any discernible impact on security, is now redundant, has alienated important immigrant communities, and has contributed to weakening the international standing of the United States. Most importantly, it continues to symbolize an approach that treats immigration solely as a security vulnerability. NSEERS information should be incorporated into

US-VISIT and the remaining aspects of the program terminated. Given the program's discriminatory nature, DHS should exercise case-by-case prosecutorial discretion to terminate removal proceedings against the nearly 14,000 individuals who were placed in proceedings because of their participation in NSEERS. Similar discretion should apply to those charged with NSEERS violations.

Finally, DHS must broaden its vision of national security to recognize that healthy, welcoming immigration policies and procedures strengthen the nation's true national security."

LIBERTY & SECURITY TRANSITION COALITION
[HTTP://2009TRANSITION.ORG/LIBERTY-SECURITY/](http://2009transition.org/liberty-security/)

Liberty and Security: Recommendations for the Next Administration and Congress

"The National Security Entry and Exit Registration System (NSEERS), launched in 2002, required non-citizens from "countries of interest" (a list comprised almost exclusively of Middle Eastern and North African nations or those with a majority-Muslim populations) to register with the then-INS. Thousands complied but others were too afraid to come forward, even if they were lawfully present and had no reason to fear suspicion. Many people affected by NSEERS have U.S. citizen family members, long employment histories in the United States, or pending immigration applications.

Proposed Solutions

The Administration should:

1. Rescind the NSEERS regulations and terminate the program.
2. Prohibit registration programs or other similar schemes based on criteria that can be used as a proxy for targeting individuals on the basis of race, religion, national origin, or ethnicity.
3. Ensure that those who did not register or did not register properly under NSEERS are not denied the opportunity to apply for immigration status or relief from deportation if otherwise eligible."

OBAMA-BIDEN TRANSITION PROJECT

[HTTP://WWW.DSL.PSU.EDU/CENTERS/IMMIGRANTS/IMMIGRATION_POLICY_TRANSITION_BLUEPRINT.PDF](http://www.dsl.psu.edu/centers/immigrants/immigration_policy_transition_blueprint.pdf)

Immigration Policy Transition Blueprint: Document produced by an outside party and submitted to the Obama-Biden Transition project.

"Initiated soon after 9/11, the National Security Entry and Exit Registration (NSEERS) program required noncitizens from "countries of interest" (a list comprised almost exclusively of Middle Eastern nations or those with a majority-Muslim population) to register with the then-INS. The NSEERS program provided little to no information in identifying terrorists and the program hindered law enforcement in some cases by alienating communities that have a strong interest in preventing terrorist acts and solving crimes.

Recommendations:

- Rescind the NSEERS regulations and prohibit similar tracking schemes that encourage

selective targeting on the basis of race, ethnicity, national origin, religion, political association, or ideology.

- Ensure that those who did not register or did not register properly under NSEERS are not denied the opportunity to apply for immigration status or relief from removal solely on the basis that they failed to register.
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ENDNOTES

¹ For purposes of this paper, the terms “NSEERS” and “special registration” will be used interchangeably.

² Immigration and Customs Enforcement, *Changes to the National Security Entry/Exit System*, December 1, 2003, <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>.

³ EDWARD ALDEN, *THE CLOSING OF AMERICAN BORDERS* 9 (HarperCollins) (2008).

⁴ Muzaffar A. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, MIGRATION POL'Y INST., June 30, 2003, available at www.migrationpolicy.org/pubs/Americas_Challenges.pdf. See also, DANIEL GRISWOLD, CATO HANDBOOK ON POLICY 652 (6th ed. 2004), available at http://www.cato.org/pubs/handbook/hb109/hb_109-65.pdf.

⁵ EDWARD ALDEN, *THE CLOSING OF AMERICAN BORDERS* 5 (HARPERCOLLINS) (2008).

⁶ Shoba Sivaprasad Wadhia, *The Policy and Politics of Immigrant Rights*, 16 TEMP. POL. & CIV. RTS. L. REV. 387 (2007), (citing to Office of the Inspector General, *The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks* (2003), available at <http://www.usdoj.gov/oig/special/0306/index.htm>).

⁷ *Id.*; see also, Muzaffar A. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, MIGRATION POL'Y INST., June 30, 2003, available at www.migrationpolicy.org/pubs/Americas_Challenges.pdf.

⁸ See, e.g., Prepared Statement: Carlina Tapia Ruano, First Vice President American Immigration Lawyers Association, Hearing before the House Committee on The Judiciary, Reauthorization of the USA Patriot Act, Jun. 10, 2005.

⁹ In this white paper, “Arab, Muslim and South Asian countries” and “Arab and South Asian countries with Muslim-majority populations” will be used interchangeably.

¹⁰ See e.g., Muzaffar A. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, MIGRATION POL'Y INST., June 30, 2003, available at www.migrationpolicy.org/pubs/Americas_Challenges.pdf; *Targets of Suspicion: The Impact of Post-9/11 Policies on Muslims, Arabs and South Asians in the United States*, American Immigration Law Foundation's Immigration Policy Center, May 31, 2004; *Special Registration: Discrimination and Xenophobia as Government Policy*, Asian American Legal Defense and Education Fund, Immigration Policy Center, November 30, 2003; *Assessing the New Normal: Liberty and Security for the Post-September 11 United States*, Human Rights First, September 30, 2003; *Presumption of Guilt: Human Rights Abuses of Post-September 11 Detainees*, Human Rights Watch, August 31, 2002; and *Terrorism and the Government's Response: Broad Initiatives Do Not Make Us Safer*, National Immigration Forum, November 30, 2003.

¹¹ The structure of the program is detailed in the Legal Authority and Analysis Section; see *infra* pp. 12-27.

¹² Immigration and Customs Enforcement, *Changes to the National Security Entry/Exit System*, December 1, 2003, <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>.

¹³ Saurav Sarkar and Sin Yen Ling, *AALDEF, Special Registration: Discrimination and Xenophobia as Government Policy* 22-23 (2004) http://www.aaldef.org/articles/2004-01-01_133_AALDEFSpecialR.pdf.

¹⁴ Plaintiff's First Amended Complaint, *Nasser v. Chertoff*, Case no. 07 C 1781; *see also*, Permission for certain nonimmigrant aliens from designated countries to register in a timely fashion, 68 Fed. Reg. 2366 (Jan. 16, 2003). (On January 16, 2003, the Department of Homeland Security in an effort to register as many Arab and Muslim non-immigrant males already present in the United States as possible reopened call-in registration between January 27, 2003 and February 7, 2003. The target focus of this call-in was to register anyone who had not already submitted to special registration. There were eighteen of the twenty-five countries on the list, including Morocco, Mr. Nasser's native country).

¹⁵ Plaintiff's First Amended Complaint, *Nasser v. Chertoff*, Case no. 07 C 1781.

¹⁶ *Id.* at 7.

¹⁷ *Id.* (The original complaint filed to the court contains an Exhibit B, as proof that Mr. Nasser was not informed about special registration by INS personnel).

¹⁸ *Id.* (No access to Exhibit C which was filed with the amended complaint).

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 8; *see also*, Saurav Sarkar and Sin Yen Ling, *AALDEF, Special Registration: Discrimination and Xenophobia as Government Policy* 22-23 (2004), http://www.aaldef.org/articles/2004-01-01_133_AALDEFSpecialR.pdf.

²² Joint Press Release, American-Arab Anti-Discrimination Committee and Yale Law School, ICE Target Immigrants From Muslim Majority Countries Prior to 2004 Presidential Election, (Oct. 20, 2008) <http://www.adc.org/PDF/frontline.pdf> (last visited: February 27, 2009).

²³ *Id.*

²⁴ *Id.* (ADC National Executive Director Kareem Shora remarked, "We are disappointed to see that despite all the reassurances made by DHS officials in the past four years; the records released demonstrate that DHS's enforcement efforts during the 'October Plan' (Operation Front Line) targeted immigrants from Muslim-majority countries. [...] When seventy-nine percent of the foreign nationals in this random sample released thanks to Yale Law School's efforts come from Muslim-majority countries, we know that our initial efforts to obtain this information were potentially denied for reasons other than those publicly stated").

²⁵ Letter from American-Arab Anti-Discrimination Committee, Letter/Complaint and Request for Investigation into Operation Frontline, to Timothy Keefer, Acting Officer, Office for Civ. Rights and Civil Liberties (February 26, 2009), <http://www.adc.org/PDF/frontlinecomplaint.pdf>.

²⁶ *See* Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, 110 Stat. 3009.

²⁷ *Id.*

²⁸ Data Management Improvement Act of 2000 (DMIA), Pub. L. No. 106-215.

²⁹ The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (PATRIOT ACT) of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

³⁰ *See id.* (enacting legislation to deter and punish terrorist acts, and to enhance law enforcement investigatory tools).

³¹ *Id.*

³² *See* Enhanced Border Security and Visa Reform Act of 2002, Pub. L. No. 107-173, 116 Stat. 543.

³³ *Id.* § 301.

³⁴ Press Release Attorney General Ashcroft Announces Implementation of the First Phase of the National Security Entry-Exit Registration System, August 12, 2002
http://www.usdoj.gov/opa/pr/2002/August/02_ag_466.htm □

³⁵ Immigration Nationality Act (INA), Pub. L. No. 82-414 (codified at 8 U.S.C. §1101 *et seq.*) (2006). (Created by The McCarran-Walter Act of 1952).

³⁶ INA § 263, 8 U.S.C. § 1303 (2008) (Registration of special groups).

³⁷ *See, e.g., Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008); *Kandamar v. Gonzales*, 464 F.3d 65 (1st Cir. 2006).

³⁸ <http://www.usdoj.gov/archive/ag/speeches/2002/060502agpreparedremarks.htm> Press Release, Attorney General Prepared Remarks on the National Security Entry-Exit Registration System, June 6, 2002. *See also* 67 Fed. Reg. 52584 (Aug. 2002). *For current language see* Registration, fingerprinting, and photographing of certain nonimmigrants 8 C.F.R. § 264.1(f) (2008).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *See* Memo from Williams, Ex. Assoc. Comm. Field Operations, on “Standard Operating Procedures for Alien Registration, HQ/INS 70/28 (Sept. 30, 2002) at 2-3, (published on AILA InfoNet at Doc. No. 03043053).

⁴² *Id.*

⁴³ 67 Fed. Reg. 52584 (Aug. 2002). *see also* Registration, fingerprinting, and photographing of certain nonimmigrants, 8 C.F.R. § 264.1(f) (2008).

⁴⁴ Obligation to provide updated information, 8 C.F.R. § 264.1(f)(5) (2008).

⁴⁵ 67 Fed. Reg. 52584 (Aug. 2002). *For current language see* Registration, fingerprinting, and photographing of certain nonimmigrants 8 C.F.R. § 264.1(f) (2008).

⁴⁶ Immigration and Customs Enforcement, Special Registration Procedures for Individuals Registered at a Port of Entry <http://www.ice.gov/doclib/pi/specialregistration/srindividuals.pdf>

⁴⁷ “Domestic” and “call-in” registration will be used interchangeably in this white paper.

⁴⁸ 67 Fed. Reg. 70525 (Nov. 22, 2002).

⁴⁹ See 67 Fed. Reg. 67766 (Nov. 6, 2002); 67 Fed. Reg. 70526 (Nov. 22, 2002); 67 Fed. Reg. 77642 (Dec. 18, 2002); and 68 Fed. Reg. 2363 (Jan. 16, 2003).

⁵⁰ *Id.*; see also Candida Harty, *Current Development: Executive Branch Developments: National Security Entry-Exit Registration System: New Registration Requirements for Certain Non-Immigration Aliens*, 17 GEO. IMMIGR. L.J. 189, 189-191 (2002). Under INA § 263, 8 U.S.C. 1303, the Attorney General is authorized to prescribe special registrations and forms for the registration and fingerprinting of special groups of non-immigrants.

⁵¹ 67 Fed. Reg. 66765-68 (Nov. 6, 2002); 68 Fed. Reg. 2366-67 (Jan. 16, 2003).

⁵² 67 Fed. Reg. 70525-28 (Nov. 22, 2002); 68 Fed. Reg. 2366-67 (Jan. 16, 2003).

⁵³ 67 Fed. Reg. 77642-44 (Dec. 18, 2002); 68 Fed. Reg. 8046-48 (Feb. 19, 2003).

⁵⁴ 68 Fed. Reg. 2363-65 (Jan. 16, 2003); 68 Fed. Reg. 8046-48 (Feb. 19, 2003).

⁵⁵ Notice by Former Attorney General John Ashcroft, pursuant to 8 CFR 264.1(f); see 67 Fed. Reg. 52584 (Feb. 13, 2003) *available at* <http://www.uscis.gov/propub/ProPubVAP.jsp?dockkey=45f662a9cf318f238b72708d8c339fe6>; see also ICE.gov, <http://www.ice.gov/pi/specialregistration/archive.htm> (Listing of Call-in Groups 1-4 and who must register) (last visited Feb. 15, 2009).

⁵⁶ ICE.gov, Special Call-In Registration Procedures For Certain Nonimmigrants http://www.ice.gov/doclib/pi/specialregistration/CALL_IN_ALL.pdf (last visited Feb. 15, 2009).

⁵⁷ *Id.*; see also 8 C.F.R. § 264.1(f)(4).

⁵⁸ ICE.gov, Special Call-In Registration Procedures For Certain Nonimmigrants http://www.ice.gov/doclib/pi/specialregistration/CALL_IN_ALL.pdf (last visited Feb. 15, 2009); see also 8 C.F.R. § 264.1(f)(4).

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ See e.g., ICE.gov, Special Call-In Registration Procedures For Certain Nonimmigrants http://www.ice.gov/doclib/pi/specialregistration/CALL_IN_ALL.pdf (last visited March 27, 2009).

⁶² Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2153, *available at* http://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf.

⁶³ For a brief review of the reorganization of the immigration agency, see Shoba Sivaprasad Wadhia, *Under Arrest: Immigrants' Rights and the Rule of Law*, 38 UNIV. OF MEMPHIS L. REV. 853 (2008); see also, ICE (<http://www.ice.gov/>), CIS (<http://www.uscis.gov/portal/site/uscis>), and CBP (<http://cbp.gov/>).

⁶⁴ See, e.g., Department of Homeland Security, Suspending the 30-Day and Annual Interview Requirements from the Special Registration Process for Certain Nonimmigrants, 68 Fed. Reg. 67578 (Dec. 2, 2003). Registration of Certain Nonimmigrant Aliens From Designated Countries, 67 Fed. Reg. 67766 (Nov. 6, 2002) ("A willful failure to comply with the requirements of this Notice constitutes a failure to maintain nonimmigrant status under section 237(a)(1)(C)(i) of the Act").

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.* 8 C.F.R. § 264.1(f)(8)(ii) (2008).

⁶⁸ *Id.* Pursuant to 8 C.F.R. § 264.1(f)(8)(iii) (2008), this presumption may be overcome by making a showing of "good cause" for failure to register at departure or if the alien is not inadmissible under § 212(a)(3)(A)(ii) of the Act.

⁶⁹ INA § 266(a); 8 U.S.C. § 1306(a) (2008) (Penalties).

⁷⁰ Department of Homeland Security, Suspending the 30-Day and Annual Interview Requirements from the Special Registration Process for Certain Nonimmigrants, 68 Fed. Reg. 67578 (Dec. 2, 2003).

⁷¹ *Id.*

⁷² *Id.* see also, 8 C.F.R. § 264.1(f)(3) (2008)

⁷³ *Id.* see also, 8 C.F.R. § 264.1(f)(4) (2008)

⁷⁴ 69 Fed. Reg. 468 (2008).

⁷⁵ Department of Homeland Security, Suspending the 30-day and annual interview requirements from the special registration process for certain non-immigrants; Interim Rule, 8 C.F.R. § 264, <http://edocket.access.gpo.gov/2003/03-30120.htm> (Vol. 68, Number 231) (Dec. 2, 2003).

⁷⁶ See Factsheet "Changes to National Security Entry-Exit Registration System" (Dec. 1, 2003), <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>; see also Factsheet US-VISIT program (May. 19, 2003), <http://www.ice.gov/pi/news/factsheets/visit051903.htm>.

⁷⁷ 69 Fed. Reg. 53318 (Aug. 31, 2004).

⁷⁸ Press Release: NSEERS 30-day and Annual Interview Requirements to be Suspended (Dec. 1, 2003), http://www.dhs.gov/xnews/releases/press_release_0306.shtm.

⁷⁹ *Id.*

⁸⁰ See, e.g., Email from Melissa Frisk, Maggio & Katter, P.C., to Shoba Sivaprasad Wadhia and Fahed Al-Rawaf "The fact remains, however, that immediate relatives of U.S. citizens are being denied

adjustment of status as a matter of discretion where the only negative variable in their case is a visa overstay, unauthorized work and willful failure to register for NSEERS. As we know, the first two reasons listed are never cited as reasons to deny immediate relative cases where no other adverse factors exist.” (March 16, 2009) (on file with author); *see also* Memo from William R. Yates, Associate Director for Operations, “Legal opinion: Effect of failure to comply with NSEERS requirements, or other evidence of inadmissibility or deportability, on the adjudication of visa petitions (October 14, 2004) (on file with author)

⁸¹ *See* Memo from Victor Cerda, ICE Acting Principal Legal Advisor, “Changes to NSEERS special registration program” (Jan. 8, 2004) (Published on AILA Doc. No. 06050512).

⁸² Email from Malea Kiblan, Kiblan Law Office, to Amala Abdur-Rahman, Clinic Student Penn State Dickinson School of Law, Center for Immigrants’ Rights (Feb. 20, 2009) (on file with author).

⁸³ Telephone Interview with Malea Kiblan, Kiblan Law Office (Oct. 24, 2008).

⁸⁴ Telephone Interview with Sin Yen Ling, Staff Attorney Asian Law Caucus (Oct. 22, 2008).

⁸⁵ Interview with Fahed Al-Rawaf, Legal Advisor, American Arab Anti-Discrimination Committee (Oct. 2008).

⁸⁶ *Id.*

⁸⁷ Letter from ACLU to the Department of Justice on the “*Registration and Monitoring of Certain Non-immigrants*,” Program (NSEERS) (Apr. 2, 2003), *available at* <http://www.aclu.org/safefree/general/17380leg20030402.html> (“Summary of the registration rule, for example, did not mention the call-in component. Indeed, in the four pages of Federal Register text explaining the proposed rule, there was a single paragraph mentioning the possibility of call-in registration, and that paragraph did not clearly indicate what would comprise such registration.” Even the March 3, 2003 Federal Register notice does not make clear that the “[a]ffected public who will be asked or required to respond [...] includes individuals who were admitted before the institution of NSEERS.” 68 Fed Reg. 10034 (Mar. 3, 2003)).

⁸⁸ *See, e.g.*, Letter from Senators Richard Durbin, Russell Feingold and Edward Kennedy, United States Senate Committee of the Judiciary, to The Honorable Michael Chertoff, Secretary Department of Homeland Security (June 28, 2005) (On file with the Director for the Center of Immigrants’ Rights at Penn State University, The Dickinson School of Law).

⁸⁹ *See e.g.*, *Homeland Security Ends Foreigner Registration Program*, USA TODAY, Dec. 1, 2003; *Registration of Muslims, Arabs halted; Homeland Security ends immigration program*, WASH. TIMES, Dec 2, 2003.

⁹⁰ *See e.g.*, American Immigration Lawyers Association (AILA) and the ACLU Immigrant Rights Project, Advisory, *Special Registration Has NOT Ended—Many Special Requirements Continue*, AILA InfoNet Doc. No. 03120441 (Dec. 4, 2003).

⁹¹ Prepared Statement: James Zogby, Hearing Before The House Committee on The Judiciary, Reauthorization of the USA Patriot Act, Jun. 10, 2005.

⁹² Letter from Senators Richard Durbin, Russell Feingold and Edward Kennedy, United States Senate Committee of the Judiciary, to the Honorable Tom Ridge, Secretary of Homeland Security (Jan. 23, 2004) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law).

⁹³ *Id.*; see also, Comments by AILA on the Interim Rule Suspending NSEERS Re-Registration Requirements, AILA InfoNet Doc. No. 04020211 (Feb. 2, 2004).

⁹⁴ *Malik v. Gonzales*, 213 Fed. Appx. 173 (4th Cir. 2007) citing *Reno v. American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 488 (1999). (Under 8 U.S.C.A. § 1252(g), courts have no jurisdiction "to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings ... under this chapter").

⁹⁵ An Immigration Judge presides over immigration court and makes decisions to determine whether an individual from a foreign country should be allowed to remain in the United States or be removed. See *Immigration Court Practice Manual, Hearings Before Immigration Judges* 55 (Apr. 2008), <http://www.usdoj.gov/eoir/vll/OCIJPracManual/Chap%204.pdf>.

⁹⁶ BIA is the administrative appellate body charged with reviewing decisions by IJs and in interpreting immigration statutes and regulation. See *Immigration Court Practice Manual, Hearings Before Immigration Judges* 101 (Apr. 2008), <http://www.usdoj.gov/eoir/vll/OCIJPracManual/Chap%206.pdf>.

⁹⁷ See *Hussain v. Kessler*, 505 F.3d 779 (7th Cir.2007); *Kandamar v. Gonzales*, 464 F.3d 65 (1st Cir. 2006); *Hadayat v. Gonzales*, 458 F.3d 659 (7th Cir. 2007); *Haswanee v. AG*, 471 F.3d 1212 (11 Cir. 2006); *Ali v. Gonzales*, 440 F.3d 678 (5th Cir. 2006); *Ahmed v. Gonzales*, 447 F.3d 433 (5th Cir. 2006); *Zerrei v. Gonzales*, 471 F.3d 342 (2nd Cir 2006); *Sarwar v. Attorney General*, 278 Fed. Appx. 222 (3rd Cir. 2008) (decision unpublished); *Lakhani v. Gonzales*, 162 Fed. Appx. 350 (5th Cir. 2007); *Malik v. Gonzales*, 213 Fed. Appx. 173 (4th Cir. 2007); *Daud v. Gonzales*, 207 Fed. Appx. 194 (3rd Cir 2006) (decision unpublished); *Khoja v. Gonzales*, 200 Fed. Appx. 302 (5th Cir. 2006) (decision unpublished); *Pirzada v. United States AG*, 164 Fed. Appx. 866 (11th Cir. 2006); *Tawfik v. Mukasey*, 2008 U.S. App. LEXIS 23143 (2d Cir. 2008) (decision unpublished); *Shaybob v. AG of the United States*, 189 Fed. Appx. 127 (3d Cir. 2006) (decision unpublished).

⁹⁸ See e.g. *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008); *Hadayat v. Gonzales*, 458 F.3d 659 (7th Cir. 2007) *Hussain v. Kessler*, 505 F.3d 779 (7th Cir.2007); *Ahmed v. Gonzales* 447 F.3d 433 (5th Cir. 2006); *Kandamar v. Gonzales*, 464 F.3d 65 (1st Cir. 2006); *Haswanee v. AG*, 471 F.3d 1212 (11 Cir. 2006); *Ali v. Gonzales*, 440 F.3d 678 (5th Cir. 2006); *Zafar v. United States AG*, 461 F.3d 1357 (11th Cir. 2006); *Butt v. Gonzales*, 201 Fed. Appx. 978 (5th Cir. 2006); *Lakhani v. Gonzales*, 162 Fed. Appx. 350 (5th Cir. 2007); *Mehr v. Gonzales*, 246 Fed. Appx. 211 (4th Cir. 2007)(decision unpublished); *Lalani v. Gonzales*, 215 Fed. Appx. 333 (5th Cir. 2007) (decision unpublished); *Daud v. Gonzales*, 207 Fed. Appx. 194 (3rd Cir 2006) (decision unpublished); *Khoja v. Gonzales*, 200 Fed. Appx. 302 (5th Cir. Tex. 2006) (decision unpublished); *Shaybob v. AG of the United States*, 189 Fed. Appx. 127 (3d Cir. 2006) (decision unpublished); *Pirzada v. United States AG*, 164 Fed. Appx. 866 (11th Cir. 2006).

⁹⁹ See *Reno v. ADC*, 525 U.S. 471, 491 (1999).

¹⁰⁰ See *Kandamar v. Gonzales*, 464 F.3d 65, 72 (1st Cir. 2006); see also *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008); *Daud v. Gonzales*, 207 Fed. Appx. 194 (3rd Cir. 2006) (decision unpublished).

¹⁰¹ See *Sarwar v. Attorney General*, 278 Fed. Appx. 222 (3rd Cir. 2008) (decision unpublished); see also *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008); *Kandamar v. Gonzales*, 464 F.3d 65, 72 (1st Cir. 2006); *Ali v. Gonzales*, 440 F.3d 678 (5th Cir. 2006); *Zerrei v. Gonzales*, 471 F.3d 342 (2nd Cir. 2006); *Sewani v. Gonzales*, 162 Fed. Appx. 285 (5th Cir. 2006) (decision unpublished); *Tawfik v. Mukasey*, 2008 U.S. App. LEXIS 23143 (2d Cir. 2008).

¹⁰² See, e.g. *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008); see also *Daud v. Gonzales*, 207 Fed. Appx. 194 (3rd Cir. 2006) (decision unpublished).

¹⁰³ See, e.g., *Kandamar v. Gonzales*, 464 F.3d 65, 74 (1st Cir. 2006) citing *Narenji v. Civiletti*, 1980 U.S. App. LEXIS 20952 (D.C. Cir. Jan. 31, 1980).

¹⁰⁴ See, e.g. Muzaffar A. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, Migration Policy Institute, (Jun. 30, 2003); Telephone Interview with Edward Alden, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations (Oct. 24, 2008); Immigrants and Minorities, Special Registration (National Security Entry-Exit Registration System) http://www.humanrightsfirst.org/us_law/immigrants/special_registration.htm (last visited Jan. 11, 2009); "Program's Value in Dispute as a Tool to Fight Terrorism," Rachel L. Swarns, *The New York Times*, Dec. 21, 2004 available at <http://query.nytimes.com/gst/fullpage.html?res=950CE0DB1330F932A15751C1A9629C8B63&sec=&sp on=&page%20wanted=>; Letter from Senators Richard J. Durbin, Russell D. Feingold, Edward M. Kennedy, to the Honorable Micheal Chertoff, Secretary of Homeland Security (Jan. 3, 2007) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Letter from Senators Richard J. Durbin, Russell D. Feingold, Edward M. Kennedy, to the Honorable Micheal Chertoff, Secretary of Homeland Security (Jun. 28, 2005) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Letter from Senators Richard J. Durbin, Russell D. Feingold, Edward M. Kennedy, to the Honorable Tom Ridge, Secretary of Homeland Security (Jan. 23, 2004) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Press Release, Russell D. Feingold, et al., Senators and Congressman Demand Ashcroft Suspend INS Special Registration Letter to Ashcroft Suspend INS Special Registration Letter to The Honorable John Ashcroft (Dec. 23, 2002) (reprint 2002),

¹⁰⁵ "Program's Value in Dispute as a Tool to Fight Terrorism," Rachel L. Swarns, *The New York Times*, Dec. 21, 2004, available at <http://query.nytimes.com/gst/fullpage.html?res=950CE0DB1330F932A15751C1A9629C8B63&sec=&sp on=&page%20wanted=>.

¹⁰⁶ *Id.*

¹⁰⁷ Factsheet Changes to NSEERS Process (Dec. 1, 2003), <http://www.ice.gov/pi/news/factsheets/NSEERSFAQ120103.htm>.

¹⁰⁸ Muzaffar A. Chisti et al., *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, MIGRATION POL'Y INST., June 30, 2003, available at www.migrationpolicy.org/pubs/Americas_Challenges.pdf.

¹⁰⁹ See *Rajah v. Mukasey*, 544 F.3d 427 (2d Cir. 2008); *Hussain v. Kessler*, 505 F.3d 779 (7th Cir. 2007); *Bilal Tariq v. Kessler*, 505 F.3d 650 (7th Cir. 2007); *Parvez v. Keisler*, 506 F.3d 93 (1st Cir. 2007); *Haswanee v. Attorney General*, 471 F.3d 1212 (11 Cir. 2006); *Sarwar v. Attorney General*, 278 Fed.

Appx. 222 (3rd Cir. 2008) (decision unpublished); *Imtiaz Ali v. Gonzales*, 440 F.3d 678 (5th Cir. 2006) (decision unpublished); *Nur Ali v. Gonzales*, 200 Fed. Appx. 294 (5th Cir. 2006) (decision unpublished).

¹¹⁰ *Kandamar v. Gonzales*, 464 F.3d 65 (1st Cir. 2006).

¹¹¹ *Imtiaz Ali v. Gonzales*, 440 F.3d 678 (5th Cir. 2006).

¹¹² *Hadayat v. Gonzales*, 458 F.3d 659 (7th Cir. 2006).

¹¹³ *Parvez v. Keisler*, 506 F.3d 93 (1st Cir. 2007).

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Ahmed v. Mukasey*, 519 F.3d 579 (6th Cir. 2008).

¹¹⁷ *Id.*

¹¹⁸ Memo from Doris Meissner, Ex. Assoc. Comm. Field Operations, INS Exercising Prosecutorial Discretion Mem. HQOPP 50/4 (Nov. 17, 2000). *available at* <http://www.bibdaily.com/pdfs/prosecutorial%20discretion.pdf>

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ *See, e.g.*; Memo from Johnny Williams, Ex. Assoc. Comm. Field Operations, HQOPS 50/5.11, Supplemental Guidance for NSEERS Registrants (Jan. 2003)(published on AILA InfoNet at Doc. No. 02121241), <http://www.immigrationlinks.com/news/INS%20Guidance%20on%20Prosecutorial%20Discretion%20for%20NSEERS.pdf>. (The January 2003 memo instructs that if officers come across an NSEERS applicant who is out of status but has submitted an application for adjustment or otherwise has a benefit immediately available, then the immigration officer should utilize the factors outlined in the Meissner memo and decline to place the individual in removal proceedings if he appears to be immediately and *prima facie* eligible for the benefit and absent any other adverse factors).

¹²² *See, e.g.*, Telephone Interview with Edward Alden, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations (Oct. 24, 2008).

¹²³ Telephone interview with Benjamin Johnson, Executive Director of American Immigration Law Foundation (Oct. 23, 2008).

¹²⁴ Domestic Wiretapping In the War On Terror: Hearing before the U.S. Comm. on Civ. Rights, (2007) (Statement of Gregory T. Nojeim, American Civil Liberties Union).

¹²⁵ Special Call-In Registration Procedures for Certain Non-Immigrants (Nov. 26, 2002) http://www.ice.gov/doclib/pi/specialregistration/CALL_IN_ALL.pdf.

¹²⁶ *See* American Immigration Lawyers Association Issue Paper, Access to Counsel ("Numerous reports

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from attorneys representing individuals subject to the NSEERS call-in registration program indicate that their clients were frequently denied access to counsel during interviews and questioning.") <http://www.aila.org/content/default.aspx?bc=1019%7C25667%7C6796%7C17351%7C9161>; See New York Advisory Committee to the United States Civil Rights Commission, Civil Rights Implications of Post-September 11 Law Enforcement Practices in New York ("In New York City, many people required to go through special registration were denied access to counsel during critical stages of the registration process, particularly while interrogated by the investigations unit of the Bureau of Immigration and Customs Enforcement of the U.S. Department of Homeland Security, when they were most vulnerable.") <http://www.usccr.gov/pubs/sac/ny0304/ch3.htm>; See ADC Press Release, Russell D. Feingold, *et al.*, Senators and Congressman Demand Ashcroft Suspend INS Special Registration Letter to The Honorable John Ashcroft (Dec. 23, 2002) (reprint 2002), <http://www.adc.org/index.php?id=1570> ("We are also concerned by reports that detainees have been denied access to counsel and are being held in deplorable conditions, including being deprived of food for more than 24 hours and being forced to sleep on cold floors."); See also, Saurav Sarkar and Sin Yen Ling, Asian American Legal Defense Education Fund, *Special Registration: Discrimination and Xenophobia as Government Policy* 3, 25-26, 33 (2004).

¹²⁷ In Person Interview Malea Kiblan, Kiblan Law Office (Oct. 24, 2008)

¹²⁸ By statute, persons in removal proceedings have "the privilege of being represented," but "at no expense to the Government." INA § 292

¹²⁹ *Aguilera-Enriquez v. INS*, 516 U.S. 565, 568 (1975).

¹³⁰ 8 C.F.R. § 292.5(b) (2008)

¹³¹ Telephone Interview with Edward Alden, Bernard I. Schwartz Senior Fellow, Council on Foreign Relations (Oct. 24, 2008).

¹³² Muzaffar A. Chisti *et al.*, *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, Migration Policy Institute, (Jun. 30, 2003); National Immigration Forum, *Immigration Enforcement in the Wake of Immigration Reform's Collapse* (2007); American-Arab Anti-Discrimination Committee, "End of Shame of NSEERS" Ad Campaign (2007); Saurav Sarkar and Sin Yen Ling, Asian American Legal Defense Education Fund, *Special Registration: Discrimination and Xenophobia as Government Policy* 22-23 (2004); Iranian-American Bar Association, *A Review of the Treatment of Iranian Nationals by the INS in Connection with the Implementation of NSEERS Special Registration Program* (2004); Arab American Institute; Rights Working Group, *Compilation of NSEERS Examples*; and the Lawyers Committee for Human Rights Now, Human Rights First Immigrants and Minorities Special Registration (National Security Entry-Exit Registration System).

¹³³ American Immigration Law Foundation, *Targets of Suspicion: The Impact of Post 9-11 Policies on Muslims, Arabs, South Asians in the United States*, Immigration Policy in Focus, vol. 3, issue 2 (May 2004), available at <http://immigration.server263.com/images/File/infocus/Targets%20of%20Suspicion.pdf>.

¹³⁴ Muzaffar A. Chisti *et al.*, *America's Challenge: Domestic Security, Civil Liberties, and National Unity After September 11*, Migration Policy Institute, (Jun. 30, 2003); National Immigration Forum, *Immigration Enforcement in the Wake of Immigration Reform's Collapse* (2007); American-Arab Anti-Discrimination Committee, "End of Shame of NSEERS" Ad Campaign (2007); Saurav Sarkar and Sin Yen Ling, Asian American Legal Defense Education Fund, *Special Registration: Discrimination and*

Xenophobia as Government Policy 22-23 (2004); Iranian-American Bar Association, *A Review of the Treatment of Iranian Nationals by the INS in Connection with the Implementation of NSEERS Special Registration Program* (2004); Arab American Institute; Rights Working Group, *Compilation of NSEERS Examples*; and the Lawyers Committee for Human Rights Now, *Human Rights First Immigrants and Minorities Special Registration (National Security Entry-Exit Registration System)*; see also Farhana Khera, President and Executive Director, Muslim Advocates, Testimony Before U.S. Senate Comm. on the Judiciary, Subcomm. on the Constitution (2008) (transcript available at <http://judiciary.senate.gov/hearings/>; see also, Kareem Shora, Legal Director, American Arab Anti-Discrimination Committee, Testimony Before U.S. Commission on Civil Rights, Briefing Wire Tapping in the War on Terror, (Mar. 9, 2007) (transcript available at <http://www.usccr.gov/calendar/transcript/cm070309.pdf>).

¹³⁵ Telephone Interview with Benjamin Johnson, Executive Director AILF (Oct. 23, 2008).

¹³⁶ *Id.*

¹³⁷ Telephone Interview with Edward Alden, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations (Oct. 24, 2008).

¹³⁸ *Id.*

¹³⁹ Immigrants and Minorities, Special Registration (National Security Entry-Exit Registration System) http://www.humanrightsfirst.org/usLaw/immigrants/special_registration.htm (last visited Jan. 11, 2009).

¹⁴⁰ *Id.*

¹⁴¹ Response Letter from Donald H. Kent, Asst. Secretary for Leg. and Intergovernmental Affairs, to Senator Richard J. Durbin, (Apr. 25, 2007). (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law). (Requesting update on NSEERS program. Certain responses to questions are not contained within the letter due to law enforcement sensitivity).

¹⁴² *Id.*; see also Letter from Senators Richard J. Durbin, Russell D. Feingold, Edward M. Kennedy, to the Honorable Micheal Chertoff, Secretary of Homeland Security (Jan. 3, 2007) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Letter from Senators Richard J. Durbin, Russell D. Feingold, Edward M. Kennedy, to the Honorable Micheal Chertoff, Secretary of Homeland Security (Jun. 28, 2005) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Letter from Senators Richard J. Durbin, Russell D. Feingold, Edward M. Kennedy, to the Honorable Tom Ridge, Secretary of Homeland Security (Jan. 23, 2004) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Response Letter from Pamela J. Turner, Asst. Sec. for Legislative Affairs, to Senator Richard J. Durbin, (2004) (On file with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law); Press Release, Russell D. Feingold, *et al.*, Senators and Congressman Demand Ashcroft Suspend INS Special Registration Letter to The Honorable John Ashcroft (Dec. 23, 2002) (reprint 2002), <http://www.adc.org/index.php?id=1570>.

¹⁴³ Press Release, Russell D. Feingold, *et al.*, Senators and Congressman Demand Ashcroft Suspend INS Special Registration Letter to The Honorable John Ashcroft (Dec. 23, 2002) (reprint 2002), <http://www.adc.org/index.php?id=1570>.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ See Civil Liberties Restoration Act, S.B. 2528/ H.R. 4591, 108th Cong. (2004); reintroduced in the House as H.R. 1502, 109th Cong. (2005).

¹⁴⁷ See Civil Liberties Restoration Act, H.R. 1502, 109th Cong. § 301 (2005).

¹⁴⁸ *Id.* § 301 (2005).

¹⁴⁹ *Id.* § 301 (2005).

¹⁵⁰ *Id.* § 302 (2005).

¹⁵¹ *Id.* § 302 (2005).

¹⁵² Shoba Sivaprasad Wadhia, *Immigration: Mind Over Matter*, 5 U. MD. L.J. ON RACE, RELIGION, GENDER & CLASS 201 (2005), *citing* to the House Judiciary Committee's Subcommittee on Immigration, Border Security, and Claims, which held an oversight hearing titled *Immigration Removal Procedures Implemented in the Aftermath of the September 11th Attacks*. (Transcript available at http://commdocs.house.gov/committees/judiciary/hju22188.000/hju22188_0f.htm).

¹⁵³ *Id.*; *citing* to H.R. 1502, Section 303; *see also* Memorandum from Immigration and Naturalization Service to Regional Directors *et al.*, HQOPP 50/4 (Nov. 17, 2000), <http://www.bibdaily.com/pdfs/prosecutorial%20discretion.pdf> (*Exercising Prosecutorial Discretion*).

¹⁵⁴ National Commission on Terrorist Attacks Upon the United States, Staff Monograph, Crisis Management and Response Post-September 11 (Apr. 21, 2004), http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Ch6.pdf.

¹⁵⁵ *Id.*

¹⁵⁶ U.S. Department of State, "Non-Immigrant Visas Issued by Nationality, FY 1997-2006," and Report of the Visa Office 2007, at http://travel.state.gov/visa/frvi/statistics/statistics_1476.html.

¹⁵⁷ Travel Industry Association, "U.S. Economy Expected to Receive a Shot in the Arm from Visa Waiver Program Expansion," *available at* <http://www.TIA.org/pressrec.asp?item=926> (last visited Dec. 6, 2008).

¹⁵⁸ Telephone Interview with Alden, Edward, Bernard L. Schwartz Senior Fellow, Council on Foreign Relations (Oct. 24, 2008).

¹⁵⁹ INA § 101(a)(15)(O)(i), 8 U.S.C. § 1101 et seq (2008). (Extraordinary abilities under the INA is defined as "aliens who have extraordinary abilities...in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim or, with regard to motion picture and television production a demonstrated record of extraordinary achievement, and whose achievements have been recognized in the field through extensive documentation, and seeks to enter the United States to continue work in an area of extraordinary ability").

¹⁶⁰ EDWARD ALDEN, *THE CLOSING OF THE AMERICAN BORDER: TERRORISM, IMMIGRATION AND SECURITY SINCE 9/11*, 1 (HarperCollins) (2008).

¹⁶¹ *Id.* at 3.

¹⁶² *Id.*

¹⁶³ Edward Alden, *Immigration Control-Special Registration Special registration's Legacy*, New America Media-News Report, Oct 4, 2008, http://news.newamericamedia.org/news/view_article.html?article_id=d179e2311af82222f49e8e9299c83490 (last visited Jan. 11, 2009).

¹⁶⁴ National Security Entry-Exit Registration System (NSEERS) Individual Case Examples (Dec. 2002) (On File with the Director for the Center of Immigrants' Rights at Penn State University, The Dickinson School of Law).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ The names and locations are fictitious to preserve anonymity.


BORDER ACTION NETWORK/ACCIÓN FRONTERIZA

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May 27, 2009

Chairman Charles E. Schumer
 Subcommittee on Immigration, Refugees, and Border Security
 Committee on the Judiciary
 United States Senate

Submission for the official record to the hearing: "Securing the Borders and America's Points of Entry, What Remains to Be Done"

Dear Senator Schumer and Members of the Immigration Subcommittee:

The Border Action Network, a co-convenor of the US-Mexico Border and Immigration Task Force and a human rights community organization based on the Arizona-Sonora border, commends you for your attention to border issues as you begin work on immigration reform in 2009. We thank you for holding the hearing on May 20, and we would like to contribute our experiences and a few recommendations to the official record.

Reform our nation's failing immigration system. We need a safe and orderly way for people to enter this country lawfully through ports of entry. Every year, men, women and even children lose their lives attempting to enter the United States in order to reunite with loved ones or to seek employment that can help improve the quality of life of their family. The death toll reaches into the hundreds year and year. One needless death is simply too many. Eliminating the years of backlogged immigration applications, providing a path to permanent residency for those who have demonstrated their willingness and commitment to being part of this country, and providing a system for new immigrant workers to enter lawfully through ports of entry will profoundly alter the stress and strains born by our families, communities, economy and country as a whole.

Increase accountability and oversight of border policy and federal border agencies. The Border Patrol has become the nation's largest law enforcement agency. They are tasked with awesome responsibility and hold tremendous power over the nearly six and half million people who call the U.S.-Mexico border region home. To ensure that the constitutional and human rights of U.S. citizens and others are upheld and to monitor the efficiency and effectiveness of billion dollar operations, we need to improve the transparency and system of checks-and-balances within border enforcement and border policy. We believe Congress should create a Border Review Commission that provides oversight, analysis and recommendation to Congress and the Department of Homeland Security on border policy and practices (see "Effective Border Policy: Security, Responsibility and Human Rights at the U.S.-Mexico Border" by the US-Mexico Border and Immigration Task Force). The Commission would combine the expertise of leadership from the border region with analysts, researchers and policy makers to provide

meaningful guidance on how to integrate border security with community security, human rights, and economic efficiency.

Integrate border community consultations. As residents of the U.S.-Mexico border, we witness every day the reality of life on the border as well as the strengths and shortcomings of our current approach to border security. Our communities need to be seen as part of the solution, rather than threats or obstacles to security. Border communities need to be consulted with as part of the process to develop new border strategies.

Strengthen and improve training of federal border agents. Federal border agents are tasked with three disparate issues: combating cross-border criminal activity, national security threats and immigration through areas other than ports of entry. Agents are under significant stress, have high turnover rates, work long hours, and are moved frequently from sector to sector. The training these agents receive in constitutional and human rights, ethics, protocols, and in determining the appropriate level of force needs to be improved and to occur more frequently. As an example, agents are recertified four times a year in weapons use even though many agents never use their weapon in their entire law enforcement career. On the other hand, the only training agents receive in Constitutional rights is during basic training even though agents utilize this knowledge in every interaction, every day.

The Border Action Network urges the Committee and Congress to consider these and other recommendations included in "Effective Border Policy: Security, Responsibility and Human Rights at the U.S.-Mexico Border." As border residents, we believe that border policy will truly be effective when it integrates the complexity of the border region and the voices, concerns and vision of border communities. Border security is interdependent with community security, human rights, accountability and healthy economies. Our communities are willing to be part of making our borders safe for everyone.

Thank you for time and commitment to strengthening the US-Mexico border and in reforming our critically important immigration system.

Citizens for Border Solutions
P.O. Box 980
Bisbee, AZ 85603

Marco DeLeon, Clerk
Subcommittee on Immigration, Refugees and Border Security
Committee on the Judiciary, United States Senate
Washington DC 20510

Dear Mr. DeLeon:

We appreciate your interest in the ongoing problems that we witness every day here on the border. Our location makes our viewpoint different from that of people working in Tucson, Phoenix, and other points farther away. We live literally on the border. We have interviewed thousands of migrants over the last 17 months.

Based upon our first-hand experience, our recommendations are as follows:

1. There is a critical need for standards to govern how the US treats migrants in short-term custody.

There are rules in place to deal with conditions at prisons, jails, juvenile detention centers, and even ICE's long-term detention facilities. But, amazingly, there are no rules at all on how we treat people in short-term Border Patrol custody. In this vacuum, the Border Patrol has been permitted to operate on an *ad hoc* basis, where a migrant's treatment might depend upon which particular federal employees happen to be on duty at the time.

The federal government should promulgate humane standards and rules, on such matters as:

- a. providing people with adequate drinking water, both at the time of apprehension in the field and while in a Border Patrol facility;
- b. providing adequate food;
- c. treating illnesses and physical injuries;
- d. avoiding needless separation of family members, especially where children are involved;
- e. providing use of a telephone;
- f. separating non-criminal migrants from those who are criminals, (particularly important when the safety of juvenile migrants is at issue);

g. informing migrants of their rights, (in a language they can understand), before asking them to sign documents; and

h. returning a migrant's belongings, (including identity documents, medications, and money), when the migrant is released from custody.

2. There must be oversight and review of how the new standards and rules are implemented. If these rules are implemented it will be possible to then have oversight .

3. Border Patrol staff must receive education and training on, (and be evaluated upon), respect for human rights.

The volunteers, who make up our organization, strongly support efforts to examine and improve border policy as part of comprehensive immigration reform. We hope we can assist in your future efforts as well. Please call upon us if we can provide any further information or any details from our statistical and anecdotal records.

Cecile Lumer, Ph.D.

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Mission:

To make Legislative recommendations to help the Texas Border Region grow and prosper economically.



**Statement by
The Honorable Chad Foster
Mayor of Eagle Pass, Texas and
Chairman of the Texas Border Coalition
Senate Committee on the Judiciary
Subcommittee on Immigration, Refugees and Border Security
May 20, 2009**

Chairman Schumer, Ranking Member Cornyn and subcommittee members, I am Chad Foster, mayor of Eagle Pass, Texas and Chairman of the Texas Border Coalition. I am speaking today on behalf of 2.1 million Americans in 17 border counties of the 1,250-mile Texas-Mexico border. Ours is a region of contrasts, exhibiting differences and similarities of language, culture, tradition, and economy. The multi-national, multi-cultural nature of our communities on both sides of the international boundary gives our region a distinct sense of place.

Our blending of cultures is unique. The Texas-Mexico border played a central role in shaping the history of our continent. Two civil wars occurred simultaneously where we live, and created such cross-cultural alliances and enmities that we could spend days rediscovering them. You can breathe easy, Mr. Chairman, because I won't go that far back in time.

I only want to travel back two years to June 2007, when the Senate last debated immigration reform. I recall the opponents of the bill saying that the borders had to be secured before any visas could be reformed or any effort made to legalize the status of the undocumented among us or to institute a guest worker program. Those conditions included, now completed, just two years later:

- 20,000-person Border Patrol force.
- DOD and DHS coordination plans.
- 600-plus miles of border fence, roads and vehicle barriers to achieve operational control.
- Deployment of unmanned aerial vehicles and related surveillance technologies.
- Cooperation among U.S., Canada, Mexico and Central American governments to improve security south of our border, specifically relating to gang and drug activity, and other law enforcement assistance.
- Law enforcement relief for states and localities that provide border related assistance.
- More ICE agents and detention space.

100 S. Monroe St. Eagle Pass, TX 78852 P: 830-773-1111 F: 830-773-9170

- Tightened voluntary departure requirements and expanded expedited removal procedures.
- Improvements and additions to our ports of entry. In my opinion, the land ports are now our nation's weakest link. We need your help and we would appreciate it now.

We are within sight of operational control of the border between the ports of entry, and that puts our ports under greater stress. According to the Government Accountability Office, we needed 4,000 new officers to secure the ports of entry before we placed the new emphasis on southbound checks to stop the trafficking of guns and cash. We needed \$4 billion in infrastructure and technology -- and I want to thank you for putting \$700 million into the stimulus bill toward this goal -- but you put most of the money in the wrong account. We need the money for GSA administered ports -- the big ones with the most traffic -- and you put it in the CBP ports. We have three of those Texas: two are on top of dams and one is a three-car hand ferry. Los Ebanos thanks you for the new rope, but we need another \$700 million, this time in the right account, please.

Mr. Chairman, our shared goal is security, and we need your help to fund these priorities that are ignored by the president's budget. We need 1,600 more CBP officers, along with 400 canine units. We need the southbound operation to be controlled by the CBP, which has training in dealing with the travelling public, and not the Border Patrol, whose training with travelers is more confrontational. We need \$130 million for 350 new ICE investigators to work on firearm trafficking and money laundering investigations and \$20 million for improved tactical field communications for CBP and ICE. We cannot afford to delay the \$20 million CBP needs to modernize its database used to identify potential criminals at the ports of entry or the \$50 million for Operation Stonegarden to reimburse state and local law enforcement for their participation in border actions.

The 9-11 terrorists entered the United States through ports of entry. Most undocumented aliens enter the United States through ports of entry. Most of the illegal drugs entering the United States come through ports of entry. No border wall will solve those problems.

Illegal border crossing arrests at the Texas-Mexico border have been falling for more than three years, without a wall, a great tribute to the deterrence of our Border Patrol and CBP officers. Arrests this year along the southern border are likely to be way below half the nearly 1.6 million during the peak in 2000.

In their headlong rush to achieve an arbitrary deadline to erect an ineffective wall, the Bush Administration chose to abandon our nation's laws that commit us to preserving our environment, our culture, our history and our religious liberties. We can't afford to go down that path -- a path that waives all laws -- again.

The Chertoff waivers will affect the natural movement of animal species, including the larger mammals that are on the threatened or endangered species lists, and cause irreparable harm to the unique eco- and bio-systems located along the Rio Grande River. They provided carte blanche for the destruction of cultural and religious artifacts that are irreplaceable to our heritage. The avoidance and mitigation of these damages is not an inconvenience to the

government. They are essential elements of our national fabric, guaranteed to the people of the United States under Articles I and II of the Constitution. We demand that Congress require the enforcement of our commitment to being a nation of laws. We support repeal of the unconstitutional waiver authority and urge the repeal of the Secure Fence Act in favor of measures that will provide our region with real security.

The Texas Border Coalition wants to finish the job of securing the border by enacting immigration reform. We support an earned legalization program for the undocumented people who are in the US today. We need an effective guest worker program to prevent the immigration policy and political failures from repeating themselves in another general. We need more than a bill that balances the ideological and political continuums in Congress and the nation. We need policies that balance supply and demand, that provide circularity and stability in demographic and economic change for our hemisphere and that will guarantee our economic and national security for years to come.

#

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Frontera de Cristo Bi-national Border Ministry

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Coordinator

Mark Adams
Coordinator

May 26, 2009

Attention to: Marco DeLeon, Clerk
Subcommittee on Immigration, Refugees and Border Security
Committee on the Judiciary, United States Senate
Washington DC 20510

As a bi-national ministry, we have both seen and experienced the impact of failed border policies; therefore, we are grateful for your hearings and pray for you as you seek to create humane and effective laws and policies that uphold the constitutional and human rights of all people and that recognize the vital role community security of border communities can play in national security.

We believe that respect for constitutional and human rights are not contrary to the purposes of community and national security; but rather enhance both by creating more trust and cooperation between local communities and federal enforcement.

Trust between local police and the community is essential. Local police taking on the roles rightfully given to federal immigration officers is detrimental to the relationship and need to be strictly limited to the identification and referral of convicted felons, not persons with immigration violations. Resources and personnel under Operation Stonegarden should focus on violent and organized crime and not on persons with administrative immigration violations.

Our community has seen the dramatic rise in the presence of federal law enforcement agents in the last 15 years. The relationship between the community and the agents has had periods of great strains which is not helpful for our agents, our community or national security goals. Just as our federal agents receive firearms training and recertification each year, our agents should be given yearly training and certification in the areas of constitutional, civil and human rights—which they have to use on a daily basis within our border communities.

Finally, I am grateful for the Douglas Border Patrol's stated commitment to upholding the highest professional standards for its agents. However, when there are problems that occur within the community there is not a transparent and effective avenue for complaints to be lodged which decreases the amount of trust that exists. There needs to be a uniform complaint procedure created along with the creation of a national, standardized database that tracks and analyzes complaints and their resolutions.

Our Board has been advocating for a comprehensive immigration reform for years and hope that this year will see that happen. As part of any reform, we believe that an examination and improvement of border policies is essential. We want to see an immigration reform that helps create healthier border communities.

Thank you for your attention.

Peace be with you,

The Reverend Mark Adams

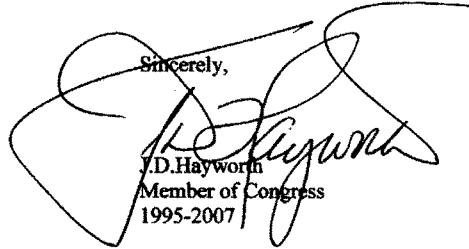
Charles E. Schumer
Chairman,
Subcommittee on Immigration, Refugees and Border Security
United States Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Schumer:

I am delighted to testify before your committee on an issue that profoundly affects our future as a nation. I have prepared written opening remarks which you will find attached.

Additionally I have attached chapter IX of my book *Whatever It Takes: Illegal Immigration, Border Security, And The War On Terror*", which details the inherent flaws of guest worker programs as disguised amnesty programs, as well as my Curriculum Vitae for your consideration.

Sincerely,

A large, stylized handwritten signature in black ink, likely belonging to J.D. Hayworth, is written over the typed name and title.

J.D. Hayworth
Member of Congress
1995-2007

Chairman Schumer, Ranking Member Cornyn, Members of the Subcommittee:

Thank you for the opportunity to testify.

Mr. Chairman, I ask unanimous consent that my complete testimony be made part of the record.

Let me begin by highlighting two very popular words from the "Washington Political Lexicon." The first is "bipartisan..." the second is "comprehensive."

In my opinion, the Federal Government's inability to secure our borders and enforce our immigration laws has been a bipartisan failure.

First the Bush Administration and now the Obama Administration have both expressed the desire for so-called "comprehensive immigration reform." While the term "comprehensive" suggests "complete or all-encompassing" reform, the American People see it for what it is: Amnesty for those who have entered this country illegally.

When members of this body attempted to move such a piece of legislation in the summer of 2007, their constituents made it clear that they wanted no part of it. The Senate switchboard was overloaded, and the ill-advised legislation was abandoned.

Yet here we are again...almost two years later, with this same ill-advised policy objective as this committee's apparent goal.

Why?

Here's some genuine straight-talk: because some Republicans want "cheap labor," and some Democrats want "cheap votes."

Sadly, what has been short-changed in this deficient political calculation is the border security...indeed the national security...that our country so desperately needs.

It was my honor to serve in the United States Congress for twelve years; I was here on September 11, 2001. Who would have thought that nearly eight years after that fateful day, we as a Nation would still be dithering over something as elemental to our National Defense as truly securing our borders?

Certainly we have created new bureaucracies and enacted new laws. But if people are not obeying existing law because the government is not enforcing existing law, what makes us think that any new laws will make a difference?

What results is a type of "public policy schizophrenia," all because Official Washington views this as a political problem to be managed, when in reality, it's a national security problem that must be solved.

Two policy objectives indicate the gulf between the real and the ideal.

First, the "Secure Fence Act of 2006" was signed into law by President Bush; it requires the construction of at least 700 miles of double layered fencing along our southern border with Mexico. But only about 200 miles of such fencing has actually been completed, because the Department of Homeland Security has chosen to count old single layer fencing and vehicle barriers as part of the fence. Now, smugglers are using collapsible ramps to drive over the vehicle barriers.

Moreover, the Obama Administration recently reintroduced the notion of a "virtual fence," despite its initial test failures in Arizona. Perhaps the new round of testing can take place not in Arizona...but at 1600 Pennsylvania Avenue. Do you think the Secret Service would be willing to eliminate the "real fence" that surrounds the White House?

The irony here is, that building a real border fence, with real protections, could create real jobs...and would be a "stimulus project" that would prove both popular and practical.

Speaking of popularity in the workplace, the "Los Angeles Times" reported last week that the "Federal Government's E-Verify program, which seeks to reduce the hiring of illegal immigrants, is becoming increasingly popular, with 1,000 new businesses signing up each week..."

Despite this critics on the Left and Right find fault with the error rate of four percent...which means there is an accuracy rate of 96 percent, and Homeland Security Secretary Janet Napolitano said E-Verify is "a cornerstone of workplace enforcement across the country."

Yet workplace enforcement is the second policy objective which prompts contradictory reactions.

The February 24th sweep of an engine parts manufacturer in Bellingham, Washington resulted in 28 arrests.

In response, Secretary Napolitano complained that Immigration and Customs Enforcement (ICE) failed to notify her of that raid in advance, and announced an investigation into the communications policies of ICE.

Those arrested were subsequently released, and Secretary Napolitano later "refined" her response, claiming that employers would now be the focus instead of illegal workers.

But with those actions, Secretary Napolitano in essence publicly berated her Department's own agents for enforcing immigration law.

And that brings us back full circle: Americans want our immigration laws enforced!

A man from Phoenix addressed the matter squarely in an e-mail to me. His observation, and I quote:

“Wouldn’t it make sense to first legislate and implement comprehensive border enforcement, as well as comprehensive employee verification before we take on comprehensive immigration reform?”

Yes, that makes great sense...but unfortunately, Official Washington shows few signs of following common-sense on this issue.

Mr. Chairman, I’ve included the full text of Chapter 9 of my book “Whatever It Takes” in my complete testimony, and again I would like to thank the subcommittee for the opportunity to testify, and will be glad to answer any questions you may have.

J.D. Hayworth served six terms in the United States House of Representatives representing the State of Arizona, and spent a decade as the first Arizonan to serve on the Committee on Ways and Means.

During his final term in Congress, Mr. Hayworth authored the book, *Whatever It Takes: Illegal Immigration, Border Security, and the War on Terror*, detailing the national security perils of uncontrolled borders and amnesty programs.

Citizens United named Congressman Hayworth its first "Ronald Reagan Fellow," and he also serves as Chairman of "Citizens United for a Secure America."

Mr. Hayworth returned to his chosen profession of broadcasting in 2007, and hosts the top-rated afternoon broadcast in Phoenix at KFYI-AM. He also serves as President of The Great 48th Group, LLC, a public policy and communication consulting firm.

Congressman Hayworth was graduated cum laude from North Carolina State University in 1980, with a double major in Speech-Communication and Political Science.

CHAPTER NINE

**GUEST WORKER =
AMNESTY = SURRENDER**

"We asked for workers, and we got people."

—Author and playwright Max
Frisch on Germany's failed
guest-worker program

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On JANUARY 7, 2004, President George W. Bush gave an address on immigration policy in the East Room at the White House. In his speech, the president called for "an immigration system that serves the American economy, and reflects the American Dream." He went on to sum up his thinking on this issue with a formulation that has become a mantra: "I propose a new temporary worker program that will match willing foreign workers with willing American employers, when no Americans can be found to fill the jobs."

The president said his plan was based on four principles:

1. America must control its borders.
2. New immigration laws should serve the American economy.
3. We should not give unfair rewards to illegal immigrants in the citizenship process or disadvantage those who came here lawfully.
4. New laws should provide incentives for temporary foreign workers to return permanently to their home countries after their period of work in the United States has expired.

He went on to propose a guest-worker program that would give illegal aliens the opportunity to live and work legally in the United States and eventually become citizens. Since the president's speech, several immigration reform bills have been introduced in Congress. The bill most closely resembling the president's initial outline was introduced in the House by Republicans Jim Kolbe and Jeff Flake of Arizona and Democrat Luis Guterrez of Illinois, and in the Senate by Republican John McCain of Arizona and Democrat Ted Kennedy of Massachusetts.

Most commonly referred to as McCain-Kennedy, the bill would let the millions of illegal aliens already in the country with an offer of employment apply for a new visa, called an H-5B, which would allow them to work in the United States as a "non-immigrant." Visa holders could work for up to six years and would be allowed to travel abroad. To qualify for the program, illegals would have to submit to fingerprinting and a background check and pay a \$1,000 fine, processing fees, and back taxes. Crimes related to immigration status or document fraud would not be held against them. Guest workers could also apply for citizenship but would not be given preferential treatment. To get a green card, workers would have to pay another \$1,000 fine, undergo more criminal checks and a medical exam, register for Selective Service, and become proficient in English.

Ironically, McCain-Kennedy would provide for a minimum of 400,000 additional guest workers every year (on top of the millions already here), which is roughly the same number of illegal alien absconders with deportation orders. While several of the sponsors of McCain-Kennedy strenuously oppose the CLEAR Act, which would allow local law enforcement to help track down these 400,000 fugitives, they think nothing of building a whole new bureaucracy to track the movements of 400,000 new guest workers every year. A strange set of priorities.

Several other guest-worker proposals have been introduced that are based on the same assumptions and promise the same benefits. Guest-worker proponents tell us the concept will stop human smuggling and the flood of illegals crossing our border, put an end to the

border deaths, increase government revenue by getting illegals to pay taxes, and lead to better wages and working conditions for guest workers and for Americans. They say it will enhance national security by letting us know who is in the country and where they are. And since guest workers will no longer fear deportation, they will be more likely to cooperate with police, which will help fight crime. Guest workers will be also more likely to have health insurance, benefiting our health care system. And, of course, they claim it will provide the workers America needs to do the jobs Americans won't.

In the interests of full disclosure I must tell you that at one time I supported a guest-worker scheme. However, after a thorough review of America's experience with similar programs, I have concluded that a guest-worker program would do nothing to solve our illegal immigration problem and would, in fact, make the problem worse by rewarding illegal behavior and encouraging even more illegal immigration.

"Matching willing workers with willing employers" is not a policy, it is a buzz phrase that really means, "We can't stop illegal immigration so we might as well legalize it." It is a way for the government to sweep its dereliction under the rug.

A guest-worker plan is wrong for our country. Here's why.

HAVE GUEST-WORKER PROGRAMS WORKED IN THE PAST?

One provision of McCain-Kennedy calls for a commission to evaluate the impact of the plan on the U.S. labor market. But we already have loads of empirical evidence on precisely these types of temporary-worker programs. As Dr. Vernon Briggs, a professor of industrial and labor relations at Cornell University, put it in testimony before the Senate Judiciary Committee: "Because [temporary-worker programs] have been undertaken in the past, they have a track record. They have been the subject of extensive research. There is no need to speculate about what might happen if any new such venture—such as that proposed by the Bush administration on January 7, 2004—were to be enacted. The outcome can be predicted."¹

And based on past experience, the predictions are all *bad*. Yet the lessons of history seem lost on the latest crop of guest-worker advocates. For them, there is no education in the second, third, or even fourth kick of a mule.

In the earliest example of this type of scheme, guest workers were used as part of a national emergency program during World War I to pick crops. Known as the *bracero* program, it allowed farmers in the Southwest to recruit and hire unskilled Mexican workers. It was later expanded to allow work in non-farm environments, such as factories. Although they were supposed to return home once their work was finished, some 45 percent of the Mexican workers never left.

The second *bracero* program, formally known as the Mexican Labor Program, was established in 1942 to help the U.S. cope with labor shortages during World War II. The program officially ended at the end of 1947, but continued unofficially for many years afterward, prompting a presidential commission to examine the issue of migratory workers. Dr. Briggs noted in his testimony, "In its thorough report on the *bracero* program in 1952, President Truman's Commission on Migratory Labor found that 'wages by states [to agricultural workers] were inversely related to the supply of alien labor.'⁴

In other words, the higher the number of *bracero* workers, the lower the wages paid to American workers. The Truman Commission report would be the first of many to conclude that temporary-worker programs were bad for American workers and bad for the American economy.

Still, the *bracero* program idea was resurrected in 1951 because of a labor shortage during the Korean War. But by the early 1960s, President John F. Kennedy determined the program was "adversely affecting the wages, working conditions, and employment opportunities of our own agricultural workers" and began phasing it out.⁵ It was permanently ended at the end of 1964 by President Lyndon Johnson.

In the late 1970s, President Jimmy Carter asked the National Commission for Manpower Policy to study whether the H-2 temporary-worker program should be expanded as a way to give employers an

alternative to illegal aliens. In May 1979, the commission's chairman advised the president that he was "strongly against" any such expansion for the usual reasons:

1. Cheap foreign labor is additive.
2. It would be another *bracero* program.
3. The government does not have the ability to manage a larger program.
4. It wouldn't slow illegal immigration.

Congress was also considering a guest-worker scheme around this time. In 1978, it established the Select Commission on Immigration and Refugee Policy to examine all aspects of our immigration policy and to make recommendations for change. Chairing the commission was the Reverend Theodore Hesburgh, the distinguished former president of Notre Dame University and a well-known political liberal who represents a church sympathetic to illegal immigrants.

Hesburgh called a guest-worker plan "seductive" and said that he was "entranced" by it, but after careful study was persuaded it would be a mistake.⁶ He concluded: "We do not think it wise to propose a program with potentially harmful consequences to the United States as a whole."⁷

In 1990 Congress passed an immigration law establishing yet another bipartisan commission to look into the issue. This one was chaired by Barbara Jordan, another liberal and the first African American woman to serve in Congress. The Jordan Commission said it would be a "grievous mistake" to assume that a guest-worker program would alleviate the problem of illegal immigration, and argued that such a program would depress wages for low-skilled American workers, exploit foreign workers, increase taxpayer costs for health care and other services, and actually encourage more illegal immigration.

Despite the mountain of evidence saying they don't work, the calls for a guest-worker scheme kept coming, prompting this response from President Bill Clinton:

I oppose efforts in Congress to institute a new guest-worker or "bracero" program that seeks to bring thousands of foreign workers into the United States to provide temporary farm labor....A new guest-worker program is unwarranted for several reasons:

1. It would increase illegal immigration.
2. It would reduce work opportunities for U.S. citizens and other legal residents.
3. It would depress wages and work standards for American workers.

When these programs were tried in the past, many temporary guest workers stayed permanently—and illegally—in this country. Hundreds of thousands of immigrants now residing in the U.S. first came as temporary workers, and their presence became a magnet for other illegal immigrants.⁴

If liberals like Theodore Heaburgh, Barbara Jordan, and Bill Clinton could understand these facts, why do so many conservatives remain so obtuse? And why have so many liberals abandoned their commitment to locking out for American workers?

It has often been said that the clinical definition of insanity is doing the same thing over and over again and expecting a different result. By that definition the proposals to give a guest-worker program just one more shot are, not to put too fine a point on it, *INSANE!* And yet the politicians never give up on them.

FACTS ON THE GROUND

Advocates claim that extending legal status to those currently working illegally in this country simply recognizes the "facts on the ground." There are already eleven to twenty million illegals here, the argument goes, and rounding them up and sending them home is unrealistic. They say opponents like me "mischaracterize" their plan as an "amnesty." Maybe they would prefer "surrender."

But compare the guest-worker notion to a tax amnesty, which gives tax evaders one last chance to comply with the law before the IRS goes

after them. In 2002, Arizona had just such a tax amnesty. Tax evaders were given a final opportunity to pay up before facing almost certain detection using sophisticated new computers. It was a huge success, with the state collecting about three times what was predicted.

The guest-worker crowd would turn that approach on its head. Instead of giving illegals a chance to conform to the law, they would change the law to conform to the aliens' illegal behavior. Guest-worker proponents have admitted as much. Writing in the *Weekly Standard*, the Manhattan Institute's Tamar Jacoby was blunt: "Far simpler to bring the law back into line with market reality, then implement the new rules with modest, commonsense enforcement measures of the sort we rely on in every other realm of American life."⁵

Ken Mehlman, the chairman of the Republican National Committee, made a similar argument in an e-mail to a conservative supporter: "Conservatives have always understood that laws don't work when they ignore market realities. In this case, the market reality is that there are jobs Americans don't want but we need done."

But are we dealing with market reality...or marked absurdity?

Again, illegals aren't taking jobs Americans won't; they're taking wages Americans won't. The *Wall Street Journal* may call this a "flexible labor market,"⁶ but the rest of us know it really amounts to "open borders." After all, once you allow unfettered competition between American workers and illegal aliens, where does it end?

Furthermore, why should "market realities" drive labor markets but not the market for goods? For example, should we do away with anti-dumping laws that protect American producers from being undercut by foreign companies selling goods at below the cost of production? I'm a pretty staunch free-trader but I'd never support repealing our anti-dumping laws. And illegal immigration is akin to poor countries "dumping" their cheap, excess labor into our economy, to the detriment of our workers.

Illegal immigration is not a market reality—it is a market distortion. You simply cannot allow unfettered competition for labor between an advanced economy like ours and the struggling,

inefficient, and often backward economies you find in places like Central America and Mexico.

Under any kind of guest-worker plan, an employer would be crazy to offer a job at anything above the minimum wage, knowing that if no American wants it at that price there will be plenty of desperate foreigners clamoring to take it. As Ruben Navarette so aptly puts it, "Guest workers are nothing but a glorified labor subsidy to farms, restaurants, construction firms, and other industries hooked on illegal immigration labor—one that often leaves workers abused and exploited."⁹

Talk about corporate welfare! The result will be a permanent and growing underclass of minimum-wage workers. For lower-income Americans, the competition with cheap imported labor makes the American Dream almost unattainable. And that is a tragedy.

FEE OR FINE?

Some call it "amnesty-lite." Others call it "amnesty on the installment plan." But there is no doubt that the guest-worker plan proposed by the president and reflected in McCain-Kennedy is amnesty. Period.

Proponents have the audacity to claim the plan is not amnesty because it doesn't, in the president's words, "place undocumented workers on the automatic path to citizenship." But what does citizenship have to do with it?

Illegals don't come here because they want to be American citizens. They don't come here having memorized the Constitution, studied American history, or become proficient in English. They come here because they want to work. If we allow them to do what they came here to do in the first place—i.e., work—that's *amnesty*.

Guest-worker proponents say it's not amnesty because, in the words of the *Arizona Republic* editorial board, "in order to achieve guest-worker status, these immigrants have to pay a stiff fine."¹⁰ The "stiff fine"? A paltry \$1,000 (\$2,000 if you go for citizenship too). Workers would even be allowed to pay in installments.

Tellingly, the president initially couldn't bring himself to call this a "fine," which would at least acknowledge some degree of wrongdoing. Instead, he called it a "fee." But it's neither fee nor fine—it's a bargain.

By itself, using a fake Social Security number is a felony punishable by a fine of up to \$250,000 and/or up to five years' imprisonment. The various guest-worker proposals pardon illegals for that offense as well as all other document-related fraud. Cha-ching.

But wait, there's more. (I'm starting to sound like one of those hucksters on late-night television.) Once legalized, guest workers will be able to have what they've earned using a phony Social Security number count toward Social Security benefits for themselves and their survivors. Break the law—or several—and get a check!

We are harangued ad nauseum that illegal aliens, in the words of Ted Kennedy, "risk great danger, and even death, to cross our borders."¹¹ But a \$1,000 fine is far less than what illegals are paying smugglers for the privilege of taking such risks. The *Arizona Republic* reported that "smugglers typically charge \$1,500 or more to guide migrants across the border." Jorge Castillo, a Guatemalan who has made the journey across the Arizona desert seven times in seven years, told the *New York Times*, "It should not cost more than \$2,000...to go from the Mexican side of the border to Phoenix." A Guatemalan illegal told the *Washington Post* he paid a coyote "\$2,400 to get him to California." Depending on how far south an immigrant starts, the going rate can jump to \$5,000 or more.

The idea that this \$1,000 "fee" is onerous is a joke. As *National Review* rightly put it, "The putative fine is little more than a retroactive smuggling fee paid to the U.S. government."¹² Let's call it Uncle Sam's piece of the action.

If you still don't believe that a puny \$1,000 fine amounts to a reward for illegals, what do you think would happen if we set up a booth at the border offering entry to the United States at that price? My guess is the line would stretch from Nogales to Buenos Aires.

What about the additional \$1,000 "fee" for a path to citizenship? Compared to what legal immigrants pay, it's downright cheap. According to a Phoenix immigration attorney who handles family-based immigration petitions, which make up the majority of immigration cases, a very conservative estimate for an immigration attorney to see a case through to permanent residency is \$2,500. The cost of an

if some folks get caught sneaking into the Super Bowl, just hit them with a small fine...but let them stay to watch the game. If that's not amnesty, I don't know what is.

Yet you will not get a single guest-worker supporter ever to admit that their plan is *de facto* amnesty. It's understandable. They see the polls showing that Americans oppose amnesty by huge margins. In fact, after testing the term on focus groups, the pro-amnesty National Council of La Raza "recommended to Mexican president Vicente Fox that he not utter the 'A' word."¹⁵ It's advice Fox has followed assiduously.

As a result, amnesty proponents will do backflips to convince us that they aren't pushing amnesty. So they try to fool us with descriptions like "regularization," "legalization," and "earned status adjustments." In one of the 2004 presidential debates, John Kerry called for "earned legalization."

For his part, John McCain tackles the problem head-on with his trademark straight talk when he told the *Tucson Citizen*: "We think we have a workable proposal, Kennedy and I, that has bipartisan support—a lot of it—that says [illegals] have to pay a \$2,000 fine, they have to work for six years before they can even be eligible for a green card, then they have to wait another five years before they can be citizens. If that's amnesty, I'm a Martian."¹⁶

Ted Kennedy, meanwhile, tries a little verbal sleight-of-hand: "Despite our compromises and bipartisan solutions, there are many who oppose these reforms. They misleadingly categorize our efforts as 'immigrant amnesty.' They refuse to accept that these reforms simply create a legalization for U.S. workers who have already been residing and working in the U.S."¹⁷

This is a version of "You say potato, I say potato" (given Kennedy's accent, I suppose it should be the other way around), let's call the whole thing off!

Earth to Ted: trust me when I say that we do accept that your reforms create a legalization scheme—that's why we call it *an amnesty*!

This is a repeat of the debate on the 1986 immigration bill, when the words "legalization" and "amnesty" were used interchangeably,

employment-based application, which is usually picked up by the company, is even more.

Most likely, legal immigrants will pay much, much more. Participating in a town-hall meeting on how Hispanic parents can improve their children's education, columnist Ruben Navarette caused a stir when he said that if illegal aliens wanted the same educational benefits available to American citizens, they should try to become legal:

I told the crowd that I knew of one person who spent twelve years and more than \$12,000 to convert her status, and that of her son, from "illegal" to "legal." That brought gasps. Apparently, that sounded like a lot of money. It isn't. I told them. It's \$1,000 per year, or about \$80 a month. I know immigrants who spend that on their monthly cell phone bill, and this is much more important.¹⁸

A fine of \$1,000 to work in the United States for six years comes to less than \$14 a month; \$2,000 for work and permanent residence to less than \$28. This is "stiff"?

The fact is that a truly punitive fine would defeat one of the goals of the guest-worker plan—bringing illegal aliens out of the shadows. Kevin Rogers, president of the Arizona Farm Bureau, writes in the *Arizona Republic*, "Farm Bureau opposes amnesty, but we do support a pathway which will encourage perhaps ten million to fourteen million people to emerge from the shadows, allow for identification, and to provide for mechanisms for proper temporary status, which could lead to legal status. These mechanisms should not suggest reward, but if too punitive will drive people further underground."¹⁹

Guest-worker advocates should just be honest about what it is they want: a blanket amnesty with a minimum of bother for illegal aliens and the businesses that hire them.

THE SUPER BOWL OF ABSURDITY

The absurd fine—excuse me, "fee"—that guest-worker advocates tout would turn illegals that by law should be sent home into legal workers that can remain here for years, probably indefinitely. That's like saying

such as when sponsor Alan Simpson said of his own bill, "Because it is called legalization, or amnesty, it seems to stick in the craw of Americans."¹⁸ Senator Jeremiah Denton said, "The second area which gives me reason for concern is the legalization or amnesty provision."¹⁹ On and on it goes.

Any fair-minded person understands that "legalization" is amnesty. But don't take my word for it. In 2001, La Raza president Raul Yzaguirre said of the distinction between amnesty and legalization: "The net effect is the same."²⁰ For once, we agree.

Y'ALL COME NOW, HEAR!

Let's take the Super Bowl analogy a little further. I am sure that every year there are a few crazies who try to sneak into the big game. Suppose a rumor began circulating that sneaking into the stadium was easy and that once inside, officials would let you stay to watch the game if you paid a small fine amounting to less than the price of a ticket. Do you think more or fewer people would try?

That is essentially what happened after the president announced his guest-worker plan. In Mexico, Central America, and elsewhere the proposal was seen as almost an open invitation to head north. Since that time our borders have been overrun.

Of course, the Bush administration denies that the president's proposal was the cause of the stampede, but that just flies in the face of the facts. One Arizona rancher along the border, George Morin, who deals with this problem every day, told *Time* magazine: "All these people say they are coming for the amnesty program. [They] have been told if they get ten miles off the border, they are home free."²¹

Luis Alberto Urrea, author of *The Devil's Highway*, the tragic story of a group of illegal aliens trying to cross into Arizona, wrote: "[W]alkers come north faster for many reasons. They believe President Bush is going to grant them amnesty and, if they rush, they can beat the imaginary deadline that seems to constantly be looming a month or two away."²²

Not long after Bush's speech, the *Wall Street Journal* reported:

Agents on the border argue that report of new work-visa regulations have morphed into wild rumors of amnesty, rumors that are triggering the northbound rush. "When the president made this announcement, every Border Patrol agent said this would happen," said Joseph Dasaro, president of Local 1613 of the Border Patrol agent's union. Added another border official, who didn't want to be identified by name, "Down there someone reads that George Bush and Vicente Fox made a deal and he thinks, 'Bush said I could have a job.'"²³

But maybe the best evidence that the president's proposal caused a flood of illegal immigration is from the Bush administration itself. After the president's guest-worker speech, the Border Patrol was ordered to interview apprehended illegals to find out whether the president's policy encouraged them to cross the border. Legal watchdog group Judicial Watch acquired the survey after filing a Freedom of Information Act request. Among the findings:

- 45 percent crossed illegally based on rumors of a Bush administration amnesty
- 63 percent received Mexican government or media information supporting the notion of a Bush administration amnesty
- 80 percent desired to apply for amnesty
- 66 percent decided to petition for family members to join them in the United States²⁴

I could have told the president as much without a survey. In fact, I did. Here's what I said during an appearance with Neil Cavuto on FOX News the day of the president's speech:

With all due respect to the president, he outlined and said this was no amnesty. He defined amnesty as taking folks, letting them jump in line and become citizens. I think you have to redefine amnesty. And it should be in this fashion: when you suddenly say to undocumented workers, "You are legal," that is amnesty.

And it is wrong, because it does not enforce existing law. Essentially what the president has said today is two words: y'all come.

And come they did. President Bush may not have meant to start an illegal stampede, but there is no doubt he did. We can either do nothing and get trampled, or we can take corrective action now to get the situation under control.

FAMILY VALUES AND ILLEGAL ALIENS

At the Summit of the Americas in 2004, President Bush told reporters that most of the workers hired under his plan would have to return "permanently" to their home countries after their work period expired. The authors of the McCain-Kennedy immigration plan likewise insist that any guest workers will have to leave the country once their six-year work visa is up (unless they qualify for permanent residency). This is silly.

Illegal immigrants won't leave, they'll just shift back to the underground economy. Illegals are used to working outside the law, both in this country and in Mexico, where anywhere from 40 to 70 percent of the people work off the books. (Maybe Mexico needs a guest-worker plan for its own people.) Unless guest-worker proponents are willing to make life more difficult for those who refuse to leave—a dubious assumption, as we'll see—they won't go anywhere.

History has shown that there is a whole lot of truth to the old cliché—"there is nothing more permanent than a temporary worker," a phenomenon that usually leads to serious long-term problems for the host country. In the midst of the riots outside Paris in fall 2005, France-based foreign correspondent Richard Z. Chénouff wrote: "The problem originated in the 1950s and 1960s, when France began importing cheap labor from its former colonies in North Africa. *Les Arabes* were to do the dirty work and eventually go home. [Sound familiar?] Few did, and today North African immigrants and their families number almost six million, more than 10 percent of the French population."²⁵

What makes anyone believe it would be different here? Remember, some 45 percent of Mexican workers brought in under the first bracero program never left.

More recently, when the Pew Hispanic Center asked Mexican "migrants" how long they expected to remain in the U.S., "a majority of respondents picked either 'as long as I can' (42 percent) or 'for the rest of my life' (17 percent)."²⁶ And after a speech in Tucson by President Bush promoting his "temporary" worker plan, an illegal alien told the *Arizona Republic*, "I don't believe it's realistic. The workers want to stay. They have lives here."²⁷

Even workers who plan to return home eventually rarely do. The papers are full of stories of illegals who only intended to be in the United States for a few years—but never seem to leave. The *New York Times* ran a story comparing and contrasting the lives of an illegal Greek immigrant who came here in 1953 and an illegal Mexican immigrant who came here in 1990. It says of Mexican illegal aliens today: "Resentment and race subtly stand in their way, as does a lingering attachment to Mexico, which is so close that many immigrants do not put down deep roots here. They say they plan to stay only long enough to make some money and then go back home. Few ever do."²⁸

One of the principal arguments for a guest-worker program is that illegal aliens are an important part of the American workforce and our economy needs them. Are we supposed to believe that we won't need these same workers in six years, at which time they would be required to leave? And when it becomes clear that guest workers aren't leaving as planned, will all those now promoting this discredited idea be out there leading the calls to round them up...or grant them amnesty?

The idea that illegal aliens will return home at the end of their work period is even more blinkered when you consider another provision the guest-worker crowd wants: family reunions.

Because the president sincerely believes that family values don't stop at the border (almost nothing does these days), he and others

think we should allow the families of guest workers to come live in the United States as well. While this gesture illustrates President Bush's humanity, it is simply unworkable.

Any child born in the United States to guest-worker families would automatically be an American citizen. And once workers put down legal roots in this country, what incentive will they have to return home? Ever? Why should they?

Suppose you were a guest worker and during your stint you and your spouse had a child. Would you voluntarily leave the U.S.—with all its education and health benefits and almost unlimited opportunity—to return to Mexico? Or would you be more determined than ever to stay in the U.S. so that your child could have the opportunities you never did? *The Arizona Republic* tells us about one illegal couple, Cecelia and Jose, expecting their first child:

Even with so much time invested living and working in the United States, they still dream of returning to Mexico some day, despite the hardships. "We miss the culture and the customs," Cecelia says. But with a baby on the way, Cecelia and Jose seem unlikely to return to Mexico. The United States will be their daughter's country, not Mexico. And as a U.S. citizen, the baby will have far more opportunities here than in Mexico, they said.²⁹

They don't call them "anchor babies" for nothing.

If you want to know how heavy the anchor can be, consider the extreme case of Christian Higuera, who, as of this writing, is serving time in an Arizona jail for assault. Higuera fathered an illegitimate child born in Arizona, which makes the infant an American citizen. According to FOX News, Higuera "said he hopes he will be allowed to stay with his child...once he gets out of jail."³⁰

Ponder that for a moment. An illegal alien and convicted felon actually harbors the hope that he will be allowed to stay in the United States once he gets out of jail simply because his illegitimate child is an American citizen! And who knows: if the past is any guide, he just might be able to pull it off.

But if a loser like Higuera doesn't think he'll have to head for home once he serves his sentence, what makes anyone believe some guest worker with an expired temporary work visa is just going to pack up and leave after experiencing what America has to offer for six years? It is preposterous.

BELGIAN PROSTITUTES AND SPANISH AMNESTY

Guest-worker proponents assure us that a properly administered program will curtail illegal immigration and allow the Border Patrol to concentrate on catching terrorists, drug smugglers, and other criminals.

But the government is simply not capable of managing a major guest-worker program that would require it to keep tabs on millions of people. A 2004 report issued by the U.S.-Mexico Binational Council says attempting a guest-worker program would be "a recipe for failure." It cited "serious shortcomings" in the way federal officials currently run the H-2A and H-2B temporary-worker programs, which are far smaller than any of the guest-worker plans now being contemplated.³¹ And yet many farmers who complain the H-2A program is too bureaucratic and cumbersome are ready to sign on to a guest-worker plan that would be exponentially worse—a textbook case of hope over experience!

An even greater obstacle to a successful guest-worker program is human nature. I came across a fascinating story in the *Wall Street Journal* on a Belgian experiment to legalize prostitution that demonstrates the point. The headline: "Belgian Experiment: Make Prostitution Legal to Fight Its Ills."³²

Does that concept sound familiar?

As you read the following excerpts, substitute "illegal aliens" for "prostitution," "illegal alien smugglers" for "human traffickers," and "coyotes" for "pimps." Let's see how "legalization" works in practice on this other form of criminal behavior.

Villa Tinto, House of Pleasure, is a pioneering example of a widening European drive to legalize prostitution, while combating the crime and violence it fosters—including the explosion in human trafficking

in recent years....By forcing the business out into the open, the governments hope to make it harder for human traffickers to thrive.³³

Guest-worker proponents likewise claim their plan will force illegal aliens out into the open, putting smugglers and coyotes out of business. But how well does it work in practice?

But even here, human trafficking endures just outside the zone. Police say illegal prostitutes still outnumber legal ones and about a quarter of the total are the victims of human trafficking or work for pimps.³⁴

And how do these illegal prostitutes manage to find work when legal ones are readily available?

Legal prostitutes typically charge more than the illegal ones—one reason the illegal ones remain in business.³⁵

The article shows that in the Belgians' fight against illegal prostitution and its attendant ills, they have everything the guest-worker crowd wants: biometric screening, better working conditions, higher wages, tough enforcement (including random searches, something we'd never tolerate), increased government revenue, and workers no longer living in the shadows. Oh, I almost forgot. They also have lots and lots of *illegal prostitution*.

The fact is, guest-worker advocates can change the law, but they cannot change human nature. As legalizing prostitution has led to more prostitutes across Europe, so legalizing immigrant workers will be seen for what it is—an open invitation for more illegal immigration.

Let's look at another recent European example: amnesty in Spain. While the rest of Europe has cracked down on illegal immigration, Spain recently instituted an amnesty for illegal workers who had a job offer and could prove they'd been in the country for six months.

The plan was announced in August 2004 but was not put into effect until March 2005. Predictably, it triggered a surge of illegal

immigrants into Spain from France, Italy, and Germany. At the end of the amnesty period it was estimated that there were three times more illegals in Spain than there had been a year earlier. The Spanish newspaper *El Mundo* said in an editorial: "On the horizon one can detect new avalanches of migrants—encouraged by this process—who could bring with them problems of crime and integration."³⁶

The illegals will surely keep right on coming, reasonably seeing Spain as the best route to settling legally in the European Union. And why shouldn't they? There have been six amnesties in Spain since 1990. Spain's labor minister, Jesús Caldera, says there will be no more. If you were an illegal alien, would you believe him?

Not surprisingly, many illegals were reluctant to accept amnesty because they thought it might cost them their jobs. One Ecuadorian illegal told National Public Radio: "Employers don't want to pay Social Security for people who have papers, so we don't know what to do."³⁷ As with prostitution in Belgium, even if you offer amnesty or "legalization," large numbers will prefer to remain underground. Will Teddy Kennedy round them up?

Let me end with what one Belgian critic of legalizing prostitution said, although she could have been talking about legalizing illegal aliens:

Critics say any benefits from legalization don't justify state-sanctioned vice. "Places like Villa Tinto are little more than assembly lines for sex where women are treated like meat for sale," says Nathalie de T'Serclaes, a Belgian senator from Brussels. She wants Belgium to embrace the Swedish model, which criminalizes clients.³⁸

When it comes to illegal immigration, employers are the "clients," and going after employers is where our enforcement emphasis must be.

THE BULLWINKLE TRAP

Guest-worker supporters tell us that the linchpin to any guest-worker bill will be strict enforcement of the law. The president says, "There must be strong workplace enforcement with tough penalties for anyone, for any employer violating these laws" and that "Our goal is clear:

to return every single illegal entrant, with no exceptions." The *Arizona Republic* commends the president because he "correctly recognizes that the success of a guest-worker program also depends on enforcing laws against those who hire" illegals.³⁹

Congressman Jeff Flake, a sponsor of guest-worker legislation, says, "Severe employer sanctions would be leveled against employers who hire unregistered workers."⁴⁰ Tamar Jacoby confidently asserts, "The reform package taking shape in Washington is not just going to be market-friendly—it's also going to be tough as nails."⁴¹

As Yogi Berra said, "It's déjà vu all over again." Remember, when President Reagan signed the 1986 amnesty bill, he called tough employer sanctions the "keystone and major element" of the law.

Yet as we've already seen, the few times the federal government actually attempted to enforce the employer sanctions contained in that law, there were howls of protest, and in every case the government's efforts collapsed like a house of cards. As a result, in 2004 there wasn't a single fine levied for immigration-law violations. Zero. Zip. zilch.

What makes anyone believe a new set of laws would be different? This skepticism is even more justified when you consider that most of those promoting a guest-worker program, including its congressional sponsors, have a history of opposing employer sanctions.

Take guest-worker sponsors John McCain and Jim Kolbe. When the 1986 amnesty bill was considered, both men voted against it, not because it would provide amnesty, but because the bill included employer sanctions!

The *Phoenix Gazette* reported in 1986: "I think it's going to pass because of the added problems of drug traffic and the need to control the Mexican border," Rep. John McCain, R-Ariz., said. "I'm against it because of the employer sanctions."⁴²

The *Greater Phoenix Business Journal* added: "Republican Rep. James Kolbe and Democrat Sen. Dennis DeConcini opposed the bill because of its employer sanctions and the possibility of discrimination against Hispanic citizens."⁴³

And, of course, we know that Ted Kennedy opposed the 1986 amnesty because he likewise opposed employer sanctions, believing (falsely) that they would lead to discrimination against Hispanics.

So here is the deal. The president has demonstrated no inclination to enforce employer sanctions. The congressional sponsors of major guest-worker legislation have a history of opposing employer sanctions. The business community has always opposed employer sanctions because they don't think businesses should be responsible for enforcing immigration law. The liberal interest groups don't like employer sanctions because they think it will lead to discrimination against Hispanics. And what is it all these folks tell us is the key to making their grand scheme work? Employer sanctions. Can you say "oceanfront property in Arizona"?

President Bush said, "People in this debate must recognize that we will not be able to effectively enforce our immigration laws until we create a temporary-worker program." Even if you accept the dubious assumption that the federal government is capable of administering a guest-worker program, shouldn't the government first have to prove that it has the will to strictly enforce our immigration laws?

The great promise that the government will finally get tough on employers who hire illegals reminds me of the weekly routine on the old Rocky-and-Bullwinkle cartoon:

Bullwinkle: "Hey Rocky, watch me pull a rabbit out of my hat."

Rocky: "Again? But that trick never works."

Bullwinkle: "This time for sure!"

Poor ol' Bullwinkle never did pull a rabbit out of his hat, and my guess is that our government won't have any more inclination to enforce employer sanctions under some harebrained guest-worker plan than it does now. Until the president—any president—is willing to stand up to the corporate special interests, the identity-group grievance-mongers, and their political allies on the Right and Left, we can count on more of the same.

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WHATEVER IT TAKES

1

Strong employer enforcement is the *sine qua non* of controlling our borders and protecting our people. It could begin today without any grand new guest-worker or other immigration reform plan. But if the people don't demand it, then we might as well take the *Wall Street Journal's* advice, open the borders, and be done with it.

Testimony of Douglas S. Massey
Before the Senate Judiciary Committee
May 20, 2009

Good morning senators. Thank you for the opportunity to testify. I am a social scientist who has been studying immigration for three decades and co-direct a research project that has been in the field for more than 25 years and generates the largest and most reliable source of data on the behavior of documented and undocumented migrants to the United States.

During the 1970s the United States declared a War on Crime; during the 1980s it declared a War on Drugs; and in the 1990s it declared a War on Immigrants. In my view, these policies had more to do with domestic politics than with the underlying realities of crime, drugs, or immigration, with negative consequences all around.

In the case of immigration, in 1986 the Immigration Reform and Control Act launched what proved to be a two decades-long militarization of the Mexico-US Border; and in 1993 the Border Patrol enacted a new strategy of blocking the border at strategic crossing points. From 1980 to 2000, the number of Border Patrol Agents increased 3.7 times, linewatch hours rose by a factor of 6.5, the agency's budget increased by a factor of 12 (see Figure 1).

Paradoxically, this militarization occurred as undocumented migration reached its peak and moving downward. It also unfolded as we were drawing closer to Mexico economically, by treaty agreeing to lower the barriers to cross-border movements of goods, capital, information, services, and certain classes of people. Between 1980 and 2000 total trade increased nine times, business visitors 7.4 times, treaty investors ten times, and intracompany transferees 27 times (see Figure 2). Somehow wished to integrate all factor markets in North America except one, and to build a border that was impermeable to all flows except workers. This fundamental contradiction was not sustainable.

Nonetheless, border enforcement accelerated during the late 1990s despite the fact that the rate of undocumented migration to the United States had been falling for years (see Figure 3). The 1990s War on Immigrants was followed by the post-911 War on Terror, which was quickly conflated with immigration and identified with the Mexico-U.S. border, despite the fact that none of the 911 hijackers entered from Mexico, that country has no Islamic terrorists cells, has no significant Moslem population, and by that point had a declining rate of undocumented migration. Border enforcement nonetheless rose exponentially after September 11, with the Border Patrol Budget increasing 95 times its 1980 level and the number of linewatch hours rising 111 times. After 911 deportations also began a marked increase, rising from just 11,000 in 1980 to some 350,000 in 2008, breaking old records last set during the mass deportation era of the 1930s.

As already noted, this massive increase in enforcement came during a time of North American economic integration and falling rates of undocumented migration and did not solve America's immigration problems. Although the probability of initial undocumented migration

fell after 1990 and the likelihood of taking an additional trip fell after 2000 (see Figure 4), even more pronounced was the sharp decline in the rate of return migration. Between 1980 and 2005 the likelihood of returning to Mexico within 12 months of an undocumented entry fell by more than half (see Figure 5).

This shift in behavior occurred because our militarization of the border increased the costs of crossing it from \$600 to \$2,200 in constant dollars (see Figure 6) while also increasing the risk of death (see Figure 7) while having no effect on the probability of apprehension (see Figure 8). Given the higher costs and risks of border crossing, fewer migrants left; but those who did still got across because the odds of apprehension did not rise. Once inside the US they hunkered down and stayed longer and in larger numbers to avoid experiencing the costs and risks again. In sum, it was because of a decline in return migration and not an increase in entry from Mexico that the undocumented population ballooned during the 1990s and made Hispanics the nation's largest minority a decade before demographers had predicted. If return migration to Mexico had remained at its pre 1986 levels, we would have had nearly 2 million fewer undocumented Mexicans settling between 1980 and 2005 (see Figure 9). This is the reason Mexico dwarfs all other countries in the unauthorized population (see Figure 10).

In three years, estimates suggest the undocumented population has peaked and begun to trend downward. This development is no doubt partly because of the remarkable acceleration in border enforcement in the wake of 911 and the rise of mass internal deportations; but it also reflects the evaporation of labor demand. Nonetheless rising enforcement and growing joblessness have not prompted a significant return of already settled migrants. Indeed, as we have seen, rates of departure have fallen to record low levels. At the same time, a quiet but massive increase in the availability of guest worker visas has provided a legal alternative to undocumented entry. According to official data, the number temporary legal workers entering from Mexico rose from 3,300 in 1980 to 361,000 in 2008, rivaling numbers last seen during the Bracero Program of the late 1960s.

These data clearly indicate that Mexican immigration is not and has never been out of control. It rises and falls with labor demand and if legitimate avenues for entry are available, migrants enter legally. The massive militarization of the border and resumption of mass deportations occurred despite the fact that rates of undocumented migration were falling and the perverse consequence was that these actions lowered the rate of return migration among those already here.

To solve our serious immigration problems, we need to undertake a program of legalization for those already resident in the country, and especially for the more than three million people who entered the country as minors and are guilty of no sin except obeying their parents. We also need to provide for the legal entry of Mexicans by increasing the number of permanent resident visas and guest worker permits to levels consistent with the needs of an integrated North American economy. Unfortunately the current immigration crisis is very much one of our own making, reflecting bad policy choices in the past; but fortunately this means that with better policy choices we have the power resolve the dilemma moving forward. Thank you for your time and attention.

Figure 1. Indicators of Rising Immigration Enforcement

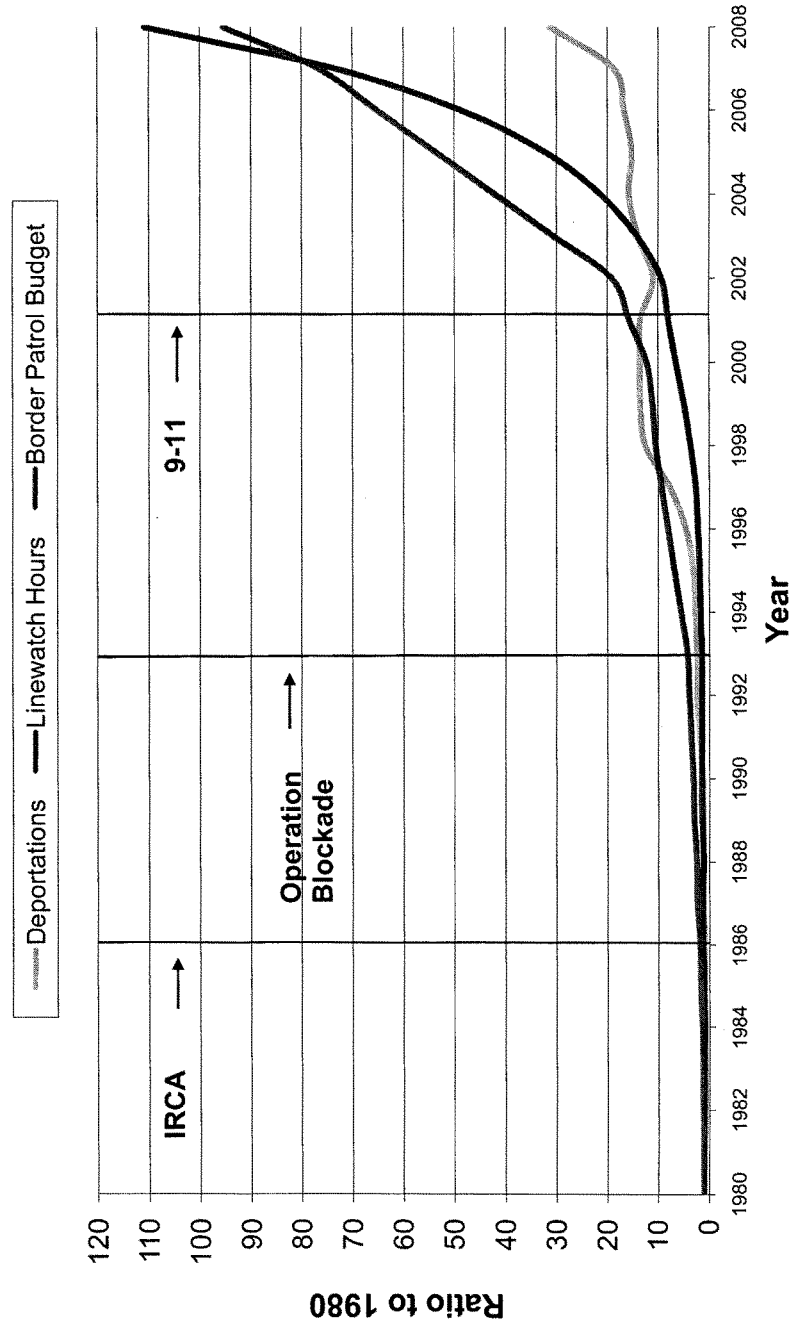


Figure 2. Indicators of Mexico-U.S. Integration 1980-2008

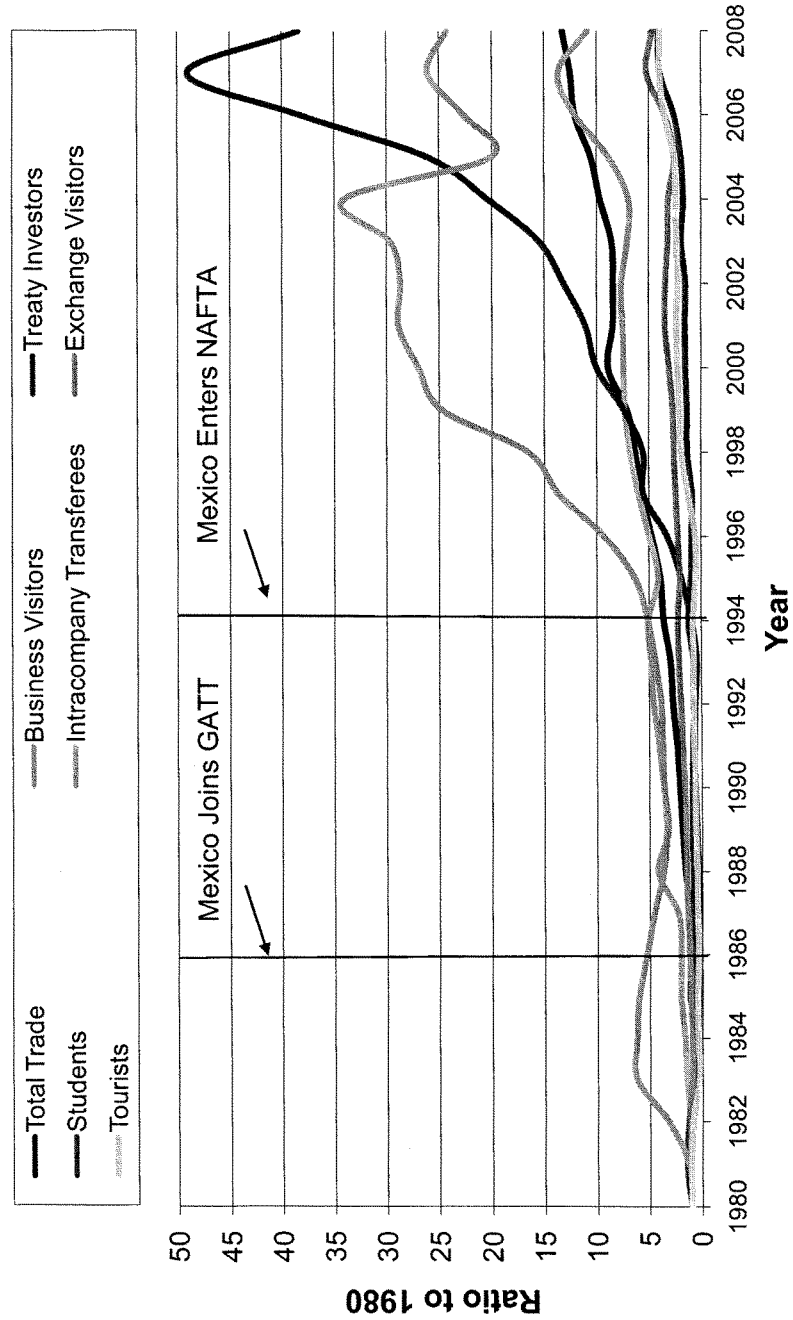


Figure 3. Net Migration Rate Between Mexico to the United States

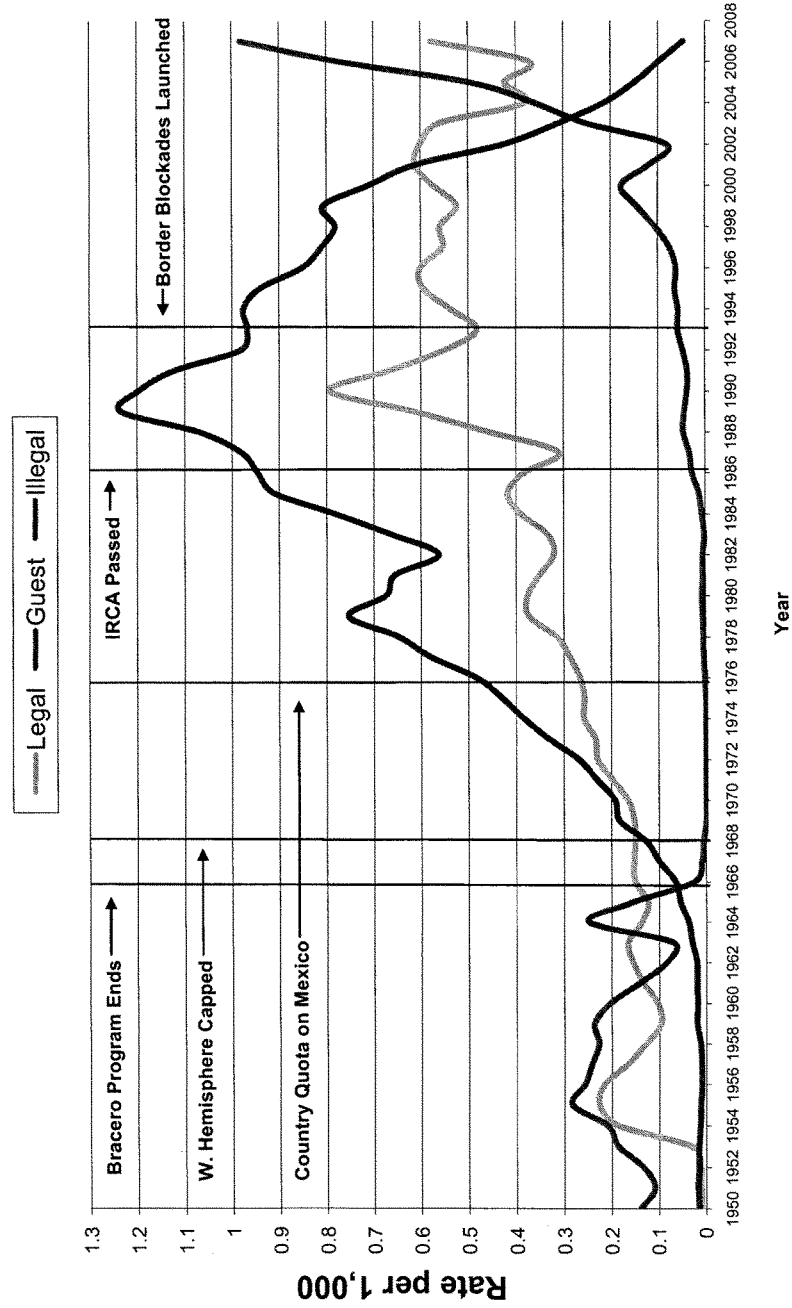


Figure 4. Probability of Undocumented Migration from Mexico to US

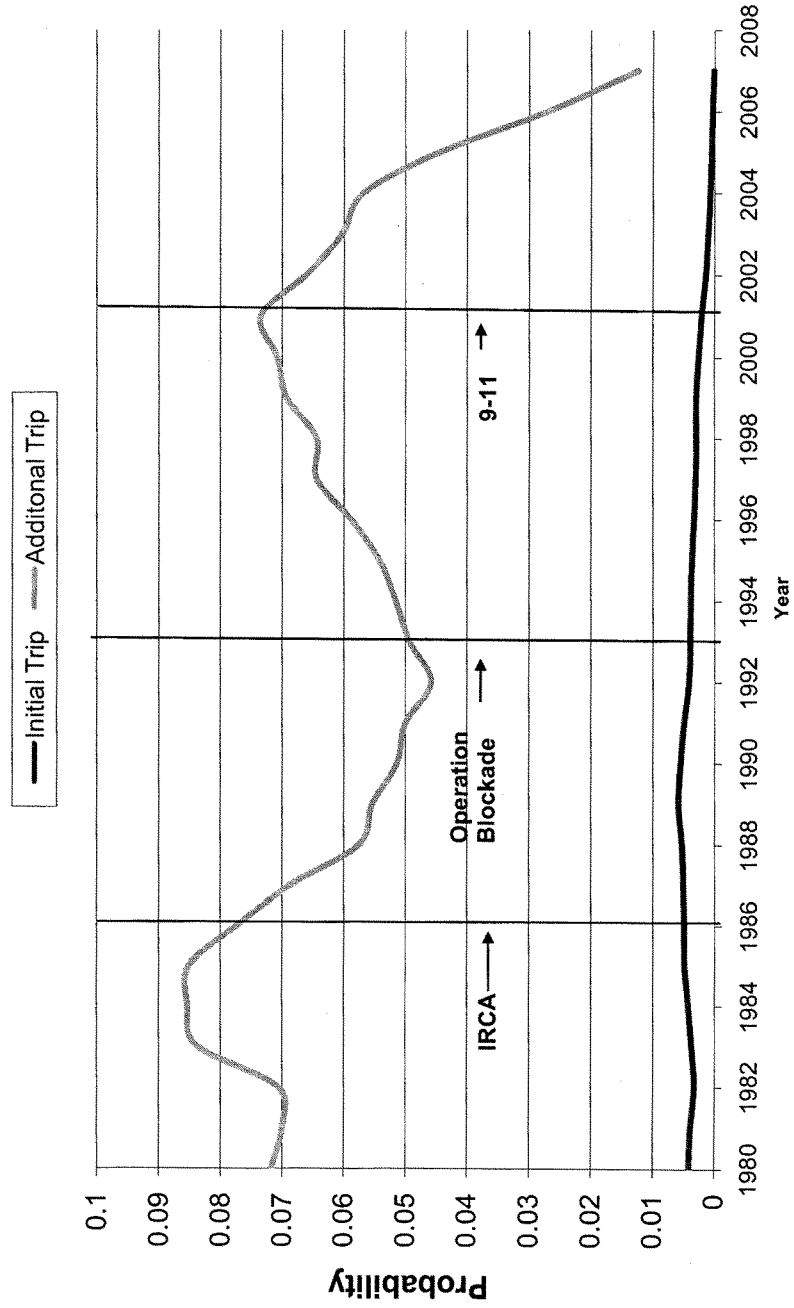


Figure 5. Probability of Return to Mexico Within 12 Months

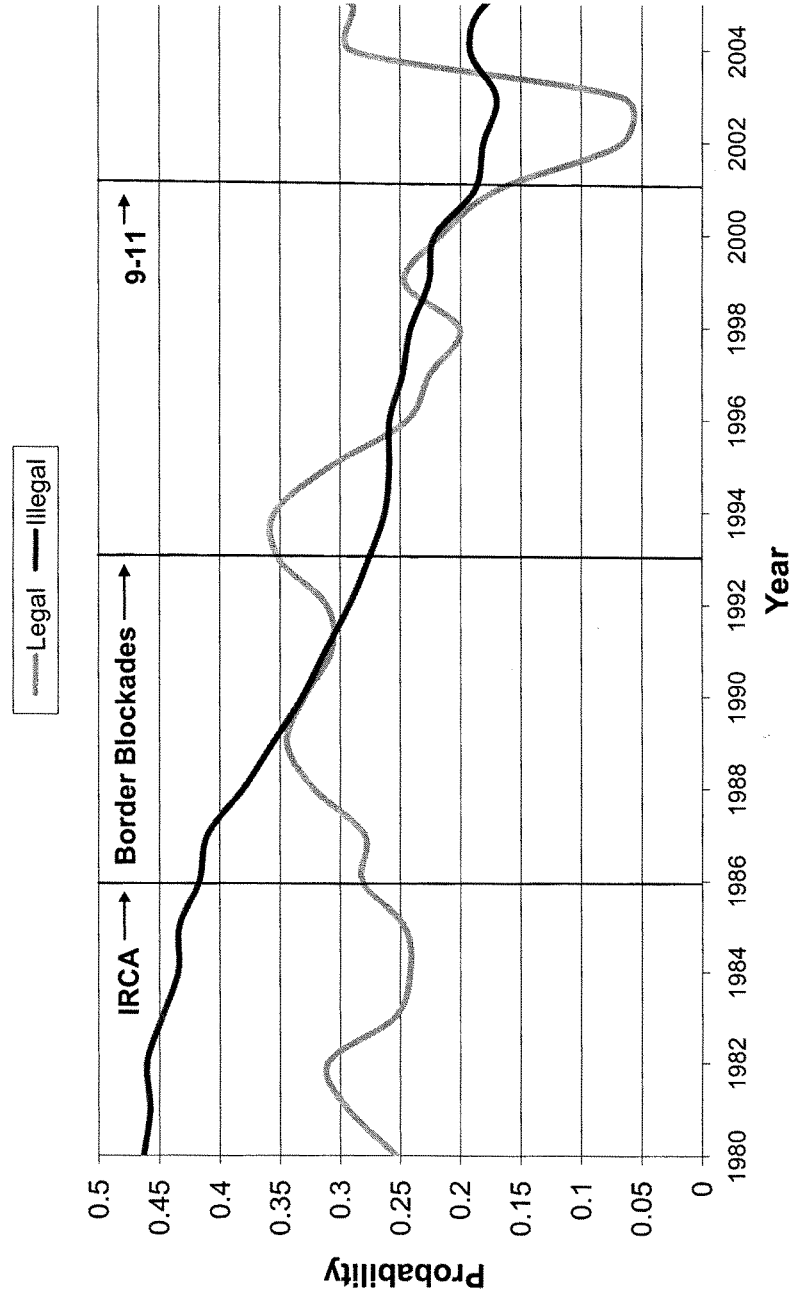


Figure 6. Cost in 2009 Dollars of Hiring a Border Smuggler

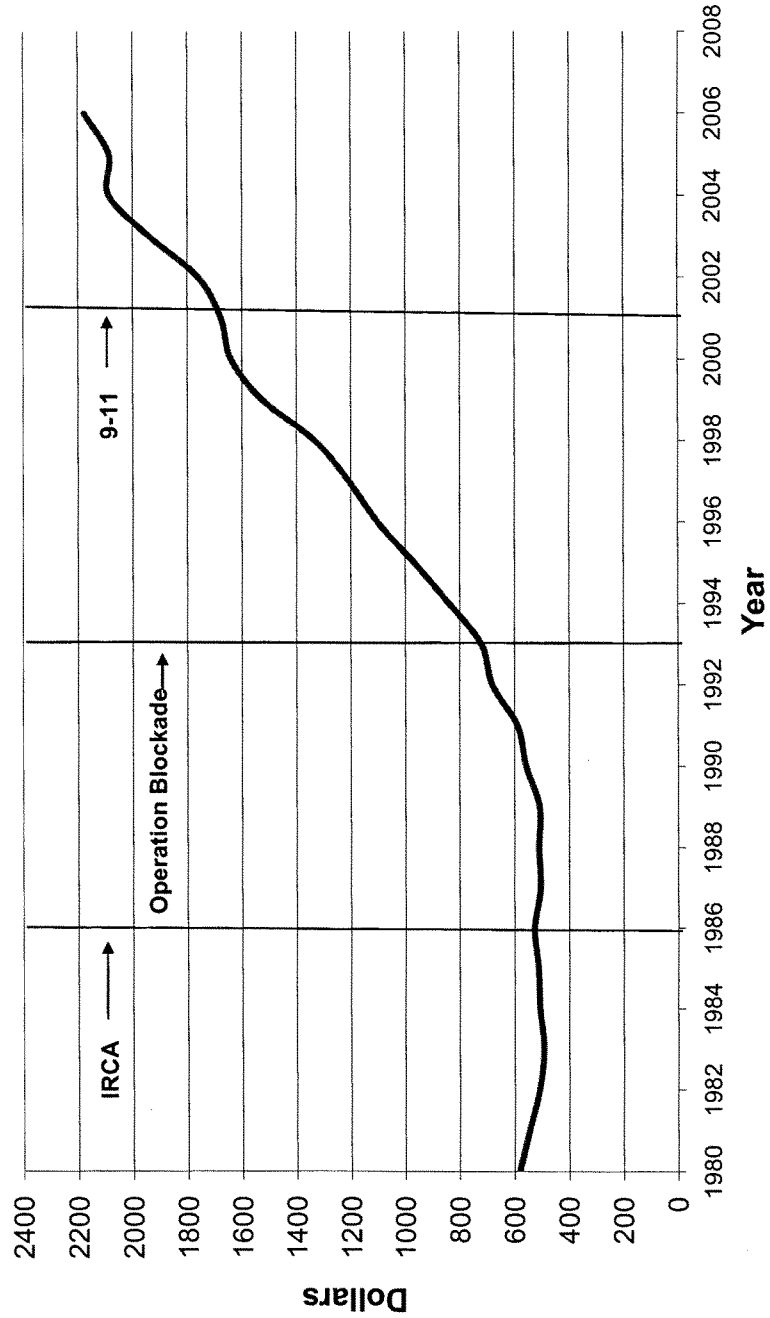


Figure 7. Border Crossing Death Rate 1986-1998

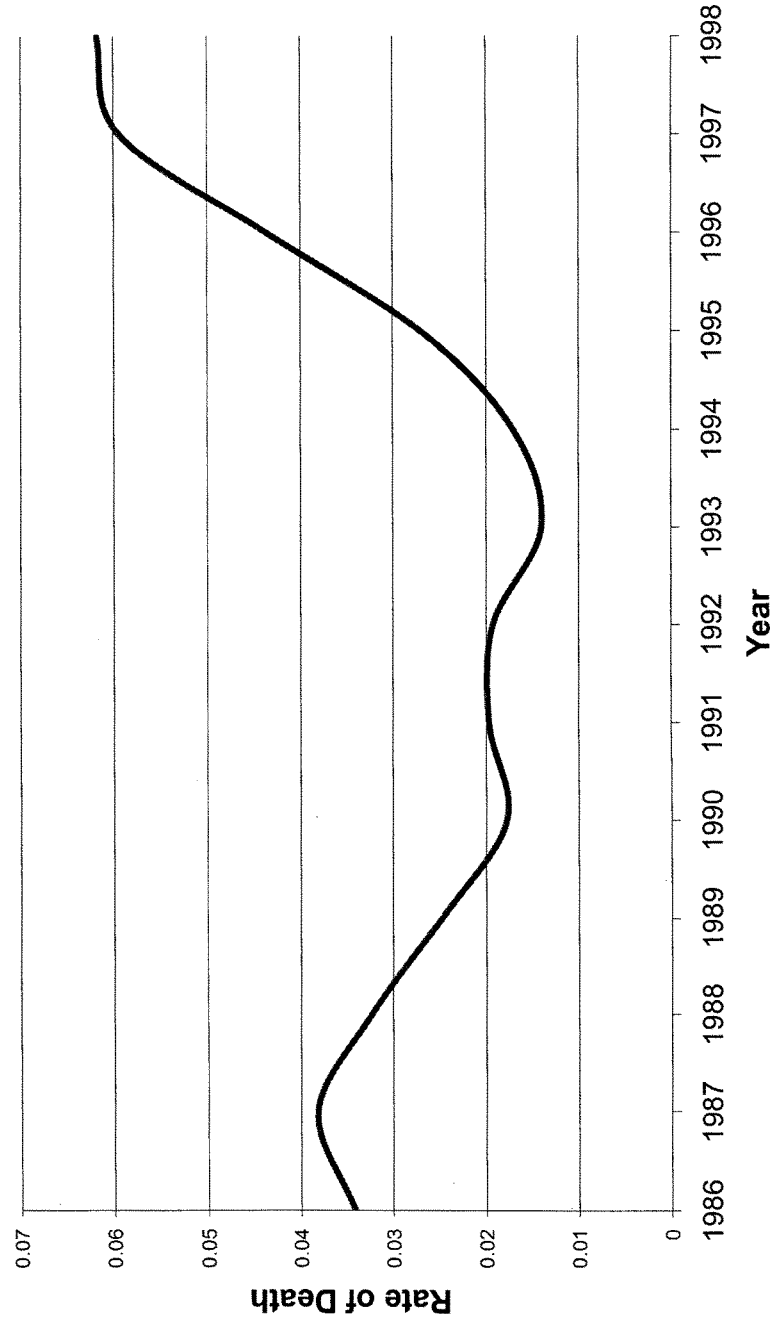


Figure 8. Probability of Apprehension During Border Crossing

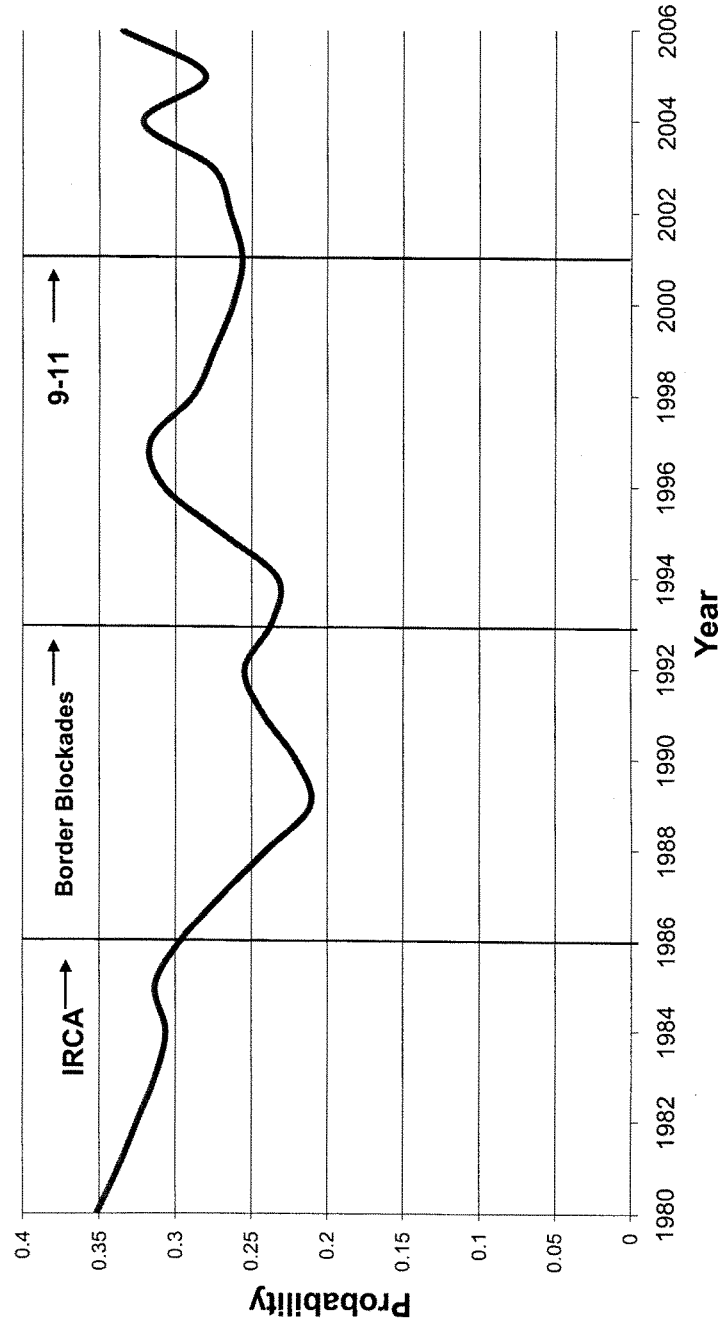


Figure 9. Net Undocumented Migration: Observed vs. Pre-1986 Rates of Return Migration to Mexico

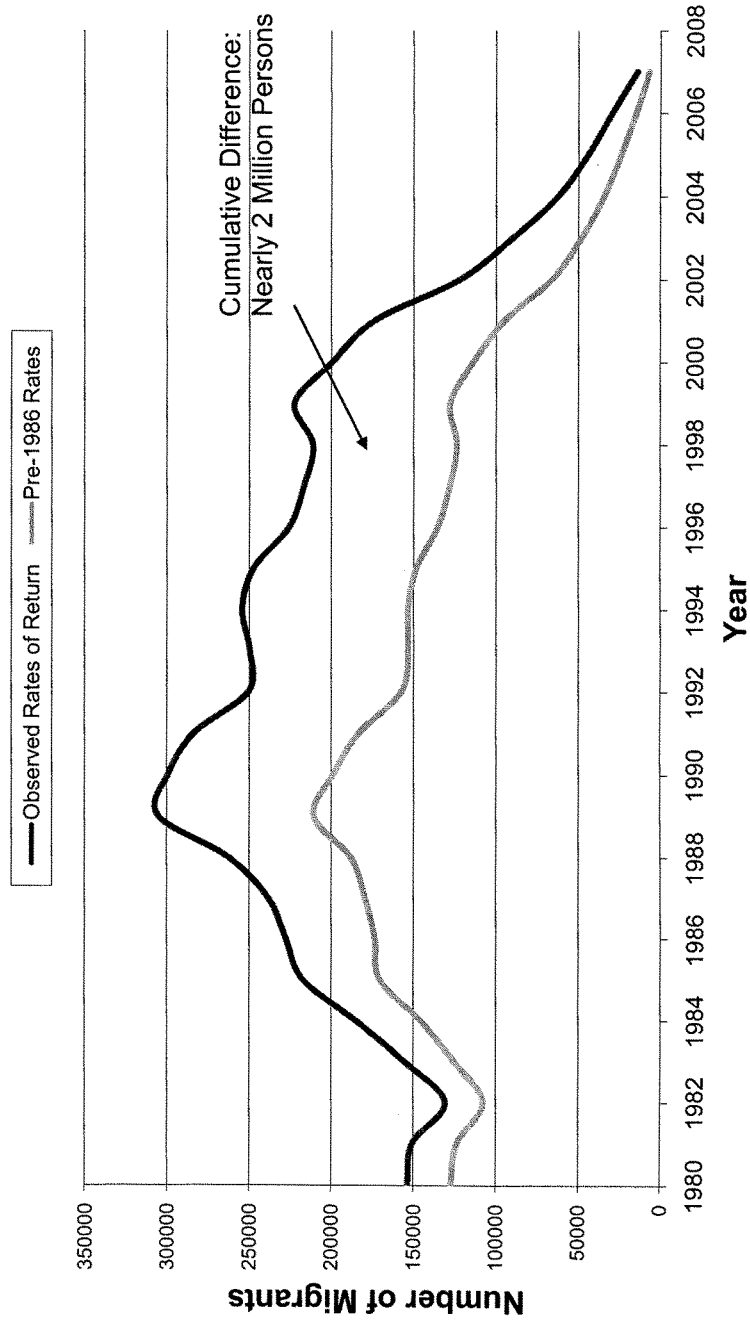
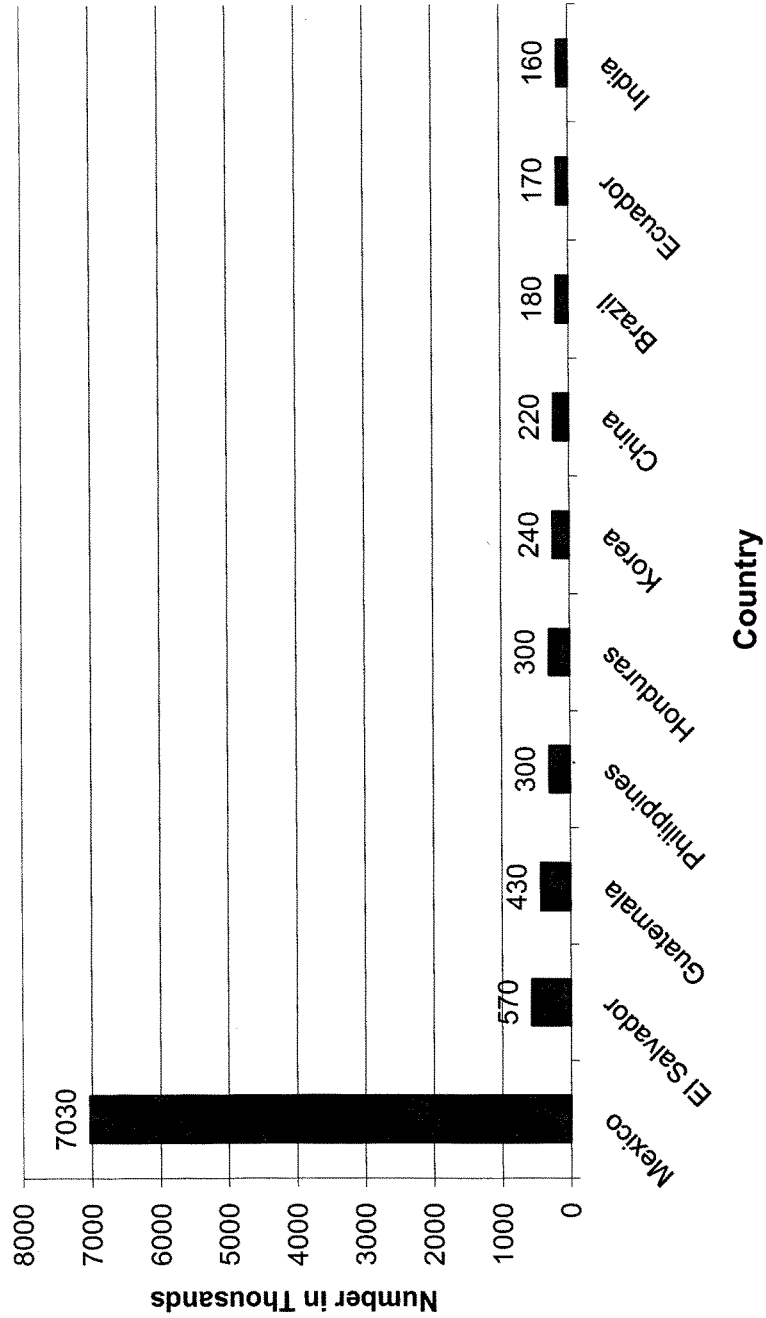


Figure 10. Unauthorized Immigrant Population 2008



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May 15, 2009

Mexican Data Show Migration to U.S. in Decline

By JULIA PRESTON

MEXICALI, Mexico — Census data from the Mexican government indicate an extraordinary decline in the number of Mexican immigrants going to the United States.

The recently released data show that about 226,000 fewer people emigrated from Mexico to other countries during the year that ended in August 2008 than during the previous year, a decline of 25 percent. All but a very small fraction of emigration, both legal and illegal, from Mexico is to the United States.

Because of surging immigration, the Mexican-born population in the United States has grown steeply year after year since the early 1990s, dipping briefly only after the attacks of Sept. 11, 2001, census data in both countries show.

Mexican and American researchers say that the current decline, which has also been manifested in a decrease in arrests along the border, is largely a result of Mexicans' deciding to delay illegal crossings because of the lack of jobs in the ailing American economy.

The trend emerged clearly with the onset of the recession and, demographers say, provides new evidence that illegal immigrants from Mexico, by far the biggest source of unauthorized migration to the United States, are drawn by jobs and respond to a sinking labor market by staying away.

"If jobs are available, people come," said Jeffrey S. Passel, senior demographer at the Pew Hispanic Center, a nonpartisan research group in Washington. "If jobs are not available, people don't come."

The net outflow of migrants from Mexico — those who left minus those who returned — fell by about half in the year that ended in August 2008 from the preceding year. The figures are based on detailed household interviews conducted quarterly by the census agency in Mexico, the National Institute of Statistics and Geography.

Along the border, the signs of the drop-off are subtle but ubiquitous. Only two beds are filled in a shelter here that houses migrants hoping to sneak into the United States. On the American side, near Calexico, Calif., Border Patrol vans return empty to their base after agents comb the desert for illegal crossers.

In recent weeks, the spread of swine flu in Mexico and the government's response of shutting down schools and canceling public gatherings brought migration here and elsewhere nearly to a halt. But demographers expect the deep flu-related decline to be temporary.

With so many Mexicans remaining in their home villages, the population of illegal immigrants in the United States stopped growing and might have slightly decreased in the last year, an abrupt shift after a decade of

yearly influxes, research by demographers in the United States shows. Mexicans account for 32 percent of immigrants in the United States, and more than half of them lack legal status, the Pew center has reported.

Still, at least 11 million illegal immigrants remain in the United States, the demographers say. Despite collapsing job markets in construction and other low-wage work, there has been no exodus among Mexicans living in the United States, the Mexican census figures show. About the same number of migrants — 450,000 — returned to Mexico in 2008 as in 2007.

Some researchers argue that the drop in crossings from Mexico proves that tough law enforcement at the border and in American workplaces can reduce illegal immigration in times of rising unemployment in the United States. Immigration and Customs Enforcement officials stepped up factory and community raids last year, and the Border Patrol expanded its force by 17 percent in one year, to nearly 17,500 agents.

"The latest evidence suggests that you can reverse the flow," said Steven A. Camarota, a demographer at the Center for Immigration Studies, a research group in Washington that calls for reduced immigration. "It is not set in stone, so with some mix of enforcement and the economy, fewer will come and more will go home."

But Wayne Cornelius, the director of the Center for Comparative Immigration Studies at the University of California, San Diego, predicted that if the United States job market revived, border enforcement would become much less of a deterrent.

The center has documented the causes of the decrease in Mexican migration through interviews this year with more than 1,000 Mexicans in California and in a Yucatán village that has been a source of migrants. In the interviews, all of the Mexicans who did set out from Yucatán for the United States reported that they eventually succeeded in crossing.

Mexicans are "not forgoing migration forever," Professor Cornelius said. "They are hoping that the economy in the United States will improve."

For now, though, Mexicans like José Luis Z., 16, of the state of Michoacán, are setting the trend. José Luis went to the Albergue del Desierto, a migrant shelter in Mexicali for minor boys, after setting out from home without telling his parents.

But when a job planting trees in Washington State fell through and he heard from migrants of increased patrolling along the border, he decided to head back home.

"I thought it would be easy, but now I see how people suffer," said José Luis, who asked that his last name be withheld because he was a minor. He said he would go back to picking strawberries in Michoacán, if his furious father did not banish him.

"There is work back home," José Luis said, "but it doesn't pay anything."

The enforcement buildup along the border, which started during the Bush administration, has made many Mexicans think twice about the cost and danger of an illegal trek when no job awaits on the other side, scholars said.

Mexican Data Show Migration to U.S. in Decline - NYTimes.com

http://www.nytimes.com/2009/05/15/us/15immig.html?_r=1&sq=may%2...

"There is a lack of certainty about jobs, so for the time being it is better to stay home," said Agustín Escobar Latapi, a sociologist at the Center for Research in Social Anthropology in Guadalajara, Mexico.

Most immigrants now need smugglers to guide them through searing deserts and hidden mountain passes where there are gaps in Border Patrol surveillance. In Mexicali, smugglers' fees are now \$3,000 to \$5,000 for a trip to Los Angeles, immigrants and social workers said. They reported that Mexicans' relatives in the United States, struggling to hold on to their own jobs, no longer had money to lend to a family member to pay a smuggler.

Some here in Mexicali said they were not surprised by the low number of Mexicans coming back from the United States. "Our people are not stupid," said Mónica Oropeza Rodríguez, the executive director of the Albergue del Desierto. "There may be a crisis in the United States, but they know that we have been in an economic crisis in Mexico for many years."

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No More Deaths • No Más Muertes

People of conscience and faith asserting the right to provide humanitarian aid to migrants

No More Deaths proposes the following standards to regulate short-term custody in order to protect the rights of all individuals detained by the Border Patrol. "Short-term custody" refers to all contact between agents and migrants during:

- apprehension in the field;
- detention at the processing centers;
- transportation;
- and repatriation at the ports of entry.

The term "agents" refers to Border Patrol agents as well as to all employees of private entities contracted by the Department of Homeland Security.

Recommended Standards : **Short-Term Border Patrol Custody**

Access to Water

This standard is to ensure that all migrants encountered are well hydrated.

- a. Agents and DHS subcontractors will provide potable water to each migrant immediately after the initial contact.
- b. To prevent contamination and spread of disease, water will be distributed in a sanitary manner. To this end, each migrant shall receive his or her own bottle (or other sanitary, personal receptacle) of water.
- c. Each migrant shall always have unlimited access to water.
- d. Particular attention will be paid to ensure that pregnant women, children, the elderly and the ill have sufficient water.
- e. Every migrant shall be offered electrolytes.

Access to Food

This standard is to ensure that each migrant is provided with appropriate portions of food immediately to help prevent weakness, dizziness, and starvation.

- a. Upon encounter, agents will ask every migrant if they are aware of any food allergies.
- b. Agents will at a minimum provide basic electrolyte replacement snacks.
- c. Each migrant will receive at least one meal regardless of the time in detention or time of arrival and subsequent meals if held for more than eight hours.
- d. Meals shall be provided at least every five hours.
- e. Meals shall be nutritious (i.e. soup, sandwich, banana or apple, and milk).
- f. Agents shall not discard food belonging to migrants unless there are safety concerns.
- g. Children and pregnant women shall be given additional access to food as desired.
- h. Mothers who are breast feeding shall not be separated from their children.

www.nomoredeaths.org | (520) 493-5583 | action@nomoredeaths.org
PO Box 40782 • Tucson, AZ 85717
A ministry of the Unitarian Universalist Church of Tucson



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Processing Center Conditions

This standard is to ensure that all migrants are detained in the safest and most humane manner.

- a. Searches shall always be conducted by an agent of the same gender as the migrant.
- b. Agents shall provide two clean blankets to each migrant and a safe and adequate area to sleep.
- c. Migrants shall have access to basic toiletries (i.e. shampoo, deodorant, toothpaste, toothbrush and/or soap).
- d. Migrants shall be given access to toilet facilities upon request; it will never be denied.
- e. Diapers and sanitary products will be made available immediately upon request.
- f. Agents shall ensure that sanitation and temperatures in cells are maintained at acceptable and comfortable levels.
- g. There must be a quarterly sanitation inspection with a written report by a local or state sanitation official. The facility must be in compliance with corrections, restrictions, or conditions stipulated by this authority.
- h. The detention areas must be cleaned, repaired, and maintained to the same standard as the entire facility (e.g. facility employees' offices).
- i. All horizontal surfaces in the detention centers shall be damp-dusted daily with a germicidal solution.
- j. Waste containers shall be lined with plastic bags and the liner shall be changed daily.
- k. Holding cells shall be cleaned daily.
- l. The detention areas shall be kept at the same temperature as the rest of the facility (i.e. facility employees' offices).
- m. Holding cells shall not exceed the maximum capacity as posted inside the facility.

Human Rights

This standard is to ensure that all migrants are treated as human beings and that their basic rights are valued at all times.

- a. Agents shall provide an environment free from harassment, humiliation, physical, sexual, verbal and emotional abuse.
- b. At no time will agents participate in torture or any form of abusive, cruel, inhumane or degrading treatment or punishment.
- c. All grievances shall be promptly and thoroughly investigated.

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Legal Proceedings

This standard is to ensure that each migrant is made aware of and given proper legal information.

- a. Upon admission, migrants shall be informed verbally and in writing of their rights in a language they understand, including the right to petition for asylum, to see a judge or attorney, and their right to consular notification.
- b. Migrants shall be given the opportunity to make a phone call to legal counsel, their Consulate, and/or a family member.
- c. When migrants are asked to sign any paperwork, the paperwork shall be in their native language to ensure that they understand what they are signing.
- d. No legal document shall be signed without consulting an attorney.
- e. Agents shall explain all paperwork content if requested to do so.
- f. Agents shall not threaten or coerce migrants into signing paperwork.

Access to Medical Treatment

This standard is to ensure that all migrants encountered receive appropriate medical treatment as quickly as possible to decrease further suffering and injury and to prevent the spread of communicable disease.

- a. Licensed medical professionals (Registered Nurse or above) shall always be on site at the processing facility.
- b. Each migrant will be medically screened at no cost by a licensed medical professional.
- c. A field assessment shall be conducted prior to transportation to a processing facility by medical personnel with at least Emergency Medical Technician certification.
- d. Licensed medical personnel shall conduct a more comprehensive screening at the detention center.
- e. A medical personnel shall provide medical treatment for any and all injuries.
- f. All open wounds and blisters shall be attended to before migrants are released.
- g. Agents shall never refuse medical treatment to any migrant, including access to hospital services.
- h. Prescriptions shall not be taken away, and will always be filled when ordered by a physician to maintain medical stability.
- i. Agents shall not interfere with medical procedures.
- j. Agents will pay close attention to pregnant women, children, the elderly and the ill to prevent any injuries.
- k. Pregnant women shall not be handcuffed after arrival at a hospital or clinic.
- l. Women in active labor shall not be handcuffed either en route to, or while in, a hospital.
- m. Agents shall not verbally or physically harass migrants while they are receiving medical treatment.

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Safe Transportation

This standard is to ensure that agents transport all migrants safely and responsibly at all times.

- a. Temperatures in vehicles shall be maintained at acceptable and comfortable levels.
- b. Transportation shall always be at a safe speed that takes into account road and weather conditions.
- c. Migrants shall not be crowded in vehicles. In vehicles, the number of migrants shall not exceed the manufacturer's recommended number of passengers.
- d. Migrants will only be transported in vehicles with seatbelts provided for each migrant.
- e. Migrants shall not be shackled unless they have seatbelts.
- f. Migrants shall only be shackled when being transported from one point to another, not in processing facilities.
- g. Transportation shall be safe and take into special consideration those with additional health care concerns including but not limited to pregnant women, infants, and children.
- h. Vehicles used for transporting migrants will be properly equipped, maintained, and operated.

Humane Repatriation & Deportation Practices

This standard is to ensure that humane repatriation and deportation practices are being applied to each migrant in the most efficient possible manner.

- a. Removals shall never be conducted in the nighttime or at unsafe hours.
- b. Agents will ensure that family members (i.e. mother, father, grandparents, aunt, uncle, brother, sister, cousins, nieces, nephews) are kept together through the process and returned together.
- c. Children shall never be separated from their family.
- d. A mother shall never be separated from her children, especially when she is breast feeding.
- e. Unaccompanied minors shall be handed over to the care of their Consulate.
- f. Identification documents, property and/or money of each migrant shall be securely labeled, stored, and returned upon removal.
- g. Medications shall always be returned to migrants.
- h. There will be no destruction of migrants' property, including clothing.
- i. Each migrant shall be fully clothed in weather appropriate clothing when removed. Agents will provide appropriate attire and/or shoes when necessary.
- j. No migrant shall be held or returned with wet clothes and agents will provide dry clothing when necessary.
- k. DHS shall provide a daily report to all appropriate consulates that contains a complete list of all repatriated and deported individuals, as well as the time and port of entry of removal.

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Independent Oversight

This standard is to guarantee compliance with the above standards and to begin the process of implementation.

- a. A Community Oversight Committee shall be established to ensure compliance.
- b. The committee shall be staffed with medical and legal professionals and individuals who work in the area of human and migrant rights.
- c. Members shall have access to processing centers and Border Patrol/DHS facilities.

These standards have been compiled by No More Deaths. More information on the campaign is available at <http://www.nomoredeaths.org>.

Please feel free to contact us at: custodystandards@nomoredeaths.org.

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Faith-Based Principles for Immigration Reform

We come together as communities of faith and people of conscience to express our indignation and sadness over the continued death of hundreds of migrants attempting to cross the US-Mexico border each year. We believe that such death and suffering diminish us all. We share a faith and a moral imperative that transcends orders, celebrates the contributions immigrant peoples bring, and compels us to build relationships that are grounded in justice and love. As religious leaders from numerous and diverse faith traditions, we set forth the following principles by which immigration policy is to be comprehensively reformed. We believe that these principles—listed from the most imminent threat to life to the deepest systemic policy problems—will significantly reduce, if not eliminate, deaths in the desert borderlands.

1. **Recognize that the current Militarized order Enforcement Strategy is a failed policy.** Since 1998 more than 4000 migrants—men, women, and children—have lost their lives in the deserts of the US-Mexico borderlands trying to make their way into the United States. These tragic and unnecessary deaths must stop. The border blockade strategy has militarized the US-Mexico border, which drives migrants into remote desert regions yet has failed to stem the flow of immigrants into the United States. Further, the fragile desert environment has sustained severe damage as a result of migrants moving through remote desert regions and responding enforcement patrols. Indeed, a militarized border control strategy has never in United States history successfully stemmed the flow of immigrants. We recognize the right of a nation to control its borders, but enforcement measures must be applied proportionately, humanely, and with a conscious effort to protect the people and the land.
2. **Address the status of undocumented persons currently living in the US.** Workers and their families currently living in the US must have access to a program of legalization that offers equity-building paths to permanent residency and eventual citizenship for workers and their families. Legalizing the undocumented workforce helps stabilize that workforce as well as their families. A stable workforce strengthens the country.
3. **Make family unity and reunification the cornerstone of the U.S. immigration system.** Migrants enter the United States either to find work or to reunite with family members, yet the arduous and lengthy process forces families to make potentially deadly choices. Families must be allowed to legally and timely re-unify as well as to immigrate together as a unit.

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4. **Allow workers and their families to enter the U.S. to live and work in a safe, legal, orderly, and humane manner through an Employment-Focused immigration program.** International workers' rights must be recognized and honored in ways that protect: the basic right to organize and collectively bargain, individual workers' religious freedoms, job portability, easy and safe travel between the US and homelands, achievable and verifiable paths to residency, and a basic human right of mobility.
5. **Recognize that root causes of migration lie in environmental, economic, and trade inequalities.** Experiences of Mexico and countries further south demonstrate that current trade and aid strategies that are based on greed and lack of basic respect deeply and negatively impact workers, their families, and the environments in migrants' homelands. This is forcing a quest-for-survival based on migration of unparalleled proportions. International agreements must be negotiated in ways that build mutual and just relationships. Such agreements must be designed to meet the needs of the present without compromising future generations' abilities to meet their needs. New strategies must include incentives for the public and private sectors to invest in economic and environmental repair and sustainable development in the sending communities.

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**THE ROLE OF LOCAL POLICE:
STRIKING A BALANCE BETWEEN IMMIGRATION ENFORCEMENT AND CIVIL LIBERTIES**

Executive Summary

In recent years, the United States has experienced historically high rates of immigration. Not only has the population of immigrants increased four-fold since the 1970s, in the last fifteen to twenty years immigrants have also settled away from traditional gateway cities and into new destinations throughout the country that have had very little experience with integrating new immigrants. The immigrant population has also grown more diverse, originating from all parts of the globe, in particular Latin America and Asia versus the predominantly Caucasian European migration of the early twentieth century. These demographic shifts have produced racial tensions, particularly in new destination communities, and given rise to contentious debate about the nation's immigration policies and practices, with long-standing resident communities demanding that government—federal, state, and local—more aggressively enforce immigration laws.

Traditionally, the prevailing view was that the responsibility for enforcing federal immigration laws was solely in the purview of the federal government. In recent years, however, local law enforcement agencies throughout the country have been drawn into the middle of the immigration debate, especially since 9/11, through pressure placed on them by their elected leaders, their communities, and the media to engage in federal immigration enforcement, a responsibility that has not traditionally been part of their organizational mandate. Beginning in the 1990s, federal immigration agencies, overwhelmed by the enormity of the task of apprehending, detaining, and deporting the country's almost twelve million unauthorized immigrants, launched programs and initiatives to induce the cooperation and assistance of the nation's approximately 18,000 state and local law enforcement agencies in identifying and deporting unauthorized immigrants living in the interior of the country. Prior to 1996, these programs were mostly directed at improving cooperation between local law enforcement and federal immigration authorities with respect to criminal detainees. In 1996, however, Congress passed legislation expanding the role of local law enforcement in federal immigration enforcement. The most well-known program is the U.S. Immigration and

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Customs Enforcement's (ICE) 287(g) program, which authorizes federal officials to enter into written agreements with state and local law enforcement agencies to carry out the functions of immigration officers, including investigation, apprehension, and detention.

While local law enforcement agencies collaborate with federal immigration authorities in a wide range of activities, most of this project's discussions focused on the ICE 287(g) program of deputizing local and state police to perform immigration enforcement activities. Police executives have felt torn between a desire to be helpful and cooperative with federal immigration authorities and a concern that their participation in immigration enforcement efforts will undo the gains they have achieved through community oriented policing practices, which are directed at gaining the trust and cooperation of immigrant communities. Police are also concerned about the impact of local law enforcement of immigration law on already strained state and local resources and particularly on the ability of local law enforcement to maintain its core mission of protecting communities and promoting public safety.

With support from the Ford Foundation, the Police Foundation launched a national effort to bring together law enforcement agencies, public officials, and community stakeholders to collaboratively examine the implications of local law enforcement of immigration laws. The main goal of the project was to provide local law enforcement with a venue to debate and disseminate their perspectives on the issue of their role in immigration enforcement so that they may have an influence in the national policy debate. A central project component was a series of focus groups held across the country that included local police, public officials, and representatives of immigrant communities and designed to elicit the perspectives and insights of those directly impacted by the issues surrounding immigration. The conversations and questions raised in the focus groups influenced the development of the agenda for a national conference in Washington in August 2008, at which scholars, policy makers, law enforcement professionals, and immigrant community representatives from across the U.S. participated in facilitated discussions and presented data and research on the issues involved in the debate. Finally, a short written survey was distributed to law enforcement executives who attended the national conference.

Although there were clearly differences of opinion among the diverse group of law enforcement representatives participating in the various project activities regarding the costs and benefits of local law enforcement participation in federal immigration enforcement, a majority of police chiefs seem to regard the costs of participation in civil immigration enforcement efforts, where there is no criminal nexus, as outweighing the potential benefits. In particular, many police executives were concerned with the impact on the relationship between immigrant communities and police and the probability of reduced cooperation

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of witnesses and victims of crime, thereby having a negative overall impact on public safety. They were also concerned about increased victimization and exploitation of immigrants, a possible increase in police misconduct, the fiscal impact on law enforcement budgets, the high possibility of error given the complexity of immigration law, the possibility of racial profiling and other civil lawsuits, and the effect on immigrant access to other municipal services. It also became clear, despite a healthy level of debate over specific issues, that certain recommendations and policy positions listed below were widely held among the group.

- The costs of participating in the U.S. Immigration and Customs Enforcement's (ICE) 287(g) program outweigh the benefits.
- Police officers should be prohibited from arresting and detaining persons to solely investigate immigration status in the absence of probable cause of an independent state law criminal violation.
- If a local agency nevertheless enters the 287(g) program, its participation should be focused on serious criminal offenders and should be limited to verifying the immigration status of criminal detainees as part of the 287(g) Jail Enforcement Officer program.
- Local and state authorities participating in federal immigration enforcement activities should develop policies and procedures for monitoring racial profiling and abuse of authority.
- In order to preserve the trust that police agencies have built over the years by aggressively engaging in community oriented policing activities, local law enforcement agencies should involve representatives of affected communities in the development of local immigration policies.
- There is a need for empirical research on ICE's 287(g) program and other methods of police collaboration with federal immigration authorities so that we have more objective data by which to better understand the way in which these programs are carried out in the field and their impact on public safety and civil liberties.
- Local law enforcement agencies should employ community-policing and problem-solving tactics to improve relations with immigrant communities and resolve tension caused by expanding immigration.
- Local law enforcement leaders and policing organizations should place pressure on the federal government to comprehensively improve border security and reform the immigration system, because the federal government's failure on both issues has had serious consequences in cities and towns throughout the country.

The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties

While much of the dialogue generated during the project centered on the specific benefits and costs of local law enforcement participation in immigration enforcement, the conversation often reverted to discussions about the core role of police and general principles of community policing. Local police must serve and protect *all* residents regardless of their immigration status, enforce the criminal laws of their state, and serve and defend the Constitution of the United States. As police agencies move away from their core role of ensuring public safety and begin taking on civil immigration enforcement activities, the perception immigrants have of the role of police moves from protection to arrest and deportation, thereby jeopardizing local law enforcement's ability to gain the trust and cooperation of immigrant communities. "How can you police a community that will not talk to you?" asked one police chief participating in the project. Without the cooperation of immigrant witnesses and victims of crime, local law enforcement's ability to identify, arrest, and prosecute criminals is jeopardized.

Over the past fifteen years, the community-policing movement has made significant gains in making communities safer, and police executives participating in the project expressed concern that local immigration enforcement efforts threaten to undo these gains. The community-policing movement has demonstrated that the effectiveness of police is heavily dependent on the relationships the police have with the communities they serve. Therefore, in developing and monitoring local immigration policies, it is critical that local law enforcement regularly communicate with affected communities and make every effort to establish a mutually cooperative and supportive relationship with immigrant communities.

The forthcoming final project report presents the most salient arguments, positions, points of consensus, and recommendations that arose during the focus groups, conference presentations and discussions, and survey responses. Also included, as appendices to the report, are a comprehensive summary of the focus group discussions, results of the conference law enforcement executive survey, the conference agenda, presenters' bios, selected presentations, sample police department policies on immigration enforcement, and six papers (abstracts below) prepared specifically for the national conference by scholars from various academic disciplines.

Abstracts of papers prepared for this project

Legal Issues in Local Enforcement of Federal Immigration Law
by Nancy Morawetz and Alina Das, New York University School of Law

As local police consider taking on enforcement of federal immigration law, they should carefully consider the legal complexity of their role and legal constraints on methods of enforcement in a legal and institutional system that

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operates quite differently from local criminal justice systems. Local police enforcement of federal immigration law must account for local, state, and federal laws that govern the rights of community residents and the obligations of localities. It must also account for the civil nature of most immigration violations. Most importantly, it must be conducted in a way that avoids several common misconceptions about the supposed targets of immigration law enforcement, including confusion over their rights, status, and place in the community. The risk of error is high, and already several localities have been subject to lawsuits over unlawful arrests and detentions, the use of racial profiling in enforcement, poor conditions of confinement, and other violations of law. This paper discusses the legal complexities of federal immigration law enforcement in the local setting and the changing demographics of communities. Risks of liability provide yet another factor for police departments to consider before making a decision about whether to tread into this new field of enforcement.

Making Civil Liberties Matter in Immigration Enforcement

by Raquel Aldana, William S. Boyd School of Law, University of Nevada-Las Vegas

The exponential rise in local law enforcement involvement in the enforcement of immigration laws raises significant questions regarding a state's source of power to enforce a traditionally federal power. As well, this trend presents local police with new challenges on how to protect the civil liberties and retain the trust of immigrant communities. In this paper, the author explains the unresolved controversy of the source and scope of local powers to enforce federal immigration laws and details the civil liberties concerns that arise from local law enforcement's involvement in immigration enforcement. The author then offers recommendations for ensuring greater civil rights compliance by local law enforcement agencies that still choose to enforce immigration laws, as well as explains immigrant's rights during these police encounters.

*Undocumented Immigration and Rates of Crime and Imprisonment:
Popular Myths and Empirical Realities*

by Rubén G. Rumbaut, University of California-Irvine

The perception that the foreign-born, especially "illegal aliens," are responsible for higher crime rates is deeply rooted in American public opinion and is sustained by media anecdote and popular myth. In the absence of rigorous empirical research, stereotypes about immigrants and crime often provide the underpinnings for public policies and practices, and shape public opinion and political behavior. These perceptions, however, are not supported empirically; in fact, they are refuted by the preponderance of scientific evidence. In addition to reviewing previous literature on immigrant criminality,

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Rumbaut looks at national violent and property crime rates since the early 1990s, during the period of highest immigration. He then analyzes incarceration rates of young men eighteen to thirty-nine, comparing differences between the foreign-born and the U.S.-born by national origin and by education, and, among the foreign-born, by length of residence in the U.S. Rumbaut also examines findings from two major surveys (IIMMLA and CILS) in Southern California, the region of greatest immigrant concentration in the United States, and focuses comparative attention on those nationalities representing distinct modes of incorporation.

Why Integration Matters: The Case of Undocumented Immigrant Youth and Moving Beyond Enforcement

by Roberto G. Gonzales, University of Washington-Seattle

Today's immigration debates have brought to the fore conflicting visions within the United States over how to address a population of eleven to twelve million undocumented immigrants. However, contemporary debates have yet to catch up to current realities and complexities of undocumented families and thus do not account, for the most part, for a growing population of undocumented children educated in the United States. Drawing upon three and a half years of fieldwork and over one hundred life histories with adult children of undocumented immigrants in Southern California, this paper seeks to address the complicated realities of contemporary immigration by examining the experiences of undocumented youth in the larger community context. It argues that while enforcement efforts are counterproductive, police and other community officials have an important role to play in the integration process of undocumented youth.

Local Enforcement of Immigration Laws: Evolution of the 287(g) Program and Its Potential Impacts on Local Communities

by Randolph Capps, Migration Policy Institute

By August 2008, sixty-two state and local agencies had entered into 287(g) agreements with U.S. Immigration and Customs Enforcement (ICE), although most were signed since 2005. Most of the jurisdictions adopting agreements are in Southeastern and Southwestern states, in conservative political areas, and in locations where recent growth in unauthorized immigration has been rapid. This paper begins with a brief timeline and overview of the 287(g) program and discusses some of the broad outlines of how it has been implemented to date. Then, for further background, population and political trends that underlie the adoption of 287(g) programs across the country are discussed. The third section of the paper relates preliminary findings about the implementation of 287(g) in Arkansas, based on a site visit there in June 2008. The site visit to the adjacent communities of Rogers and Springdale, Arkansas, confirmed that 287(g) officers there were

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checking immigration status in a variety of operations, including: routine traffic stops, worksite investigations, drug raids, and at the county jails in both communities. Several hundred immigrants had been arrested, detained, and sent into the custody of ICE for deportation over the course of the first six months. Latino community leaders who had originally supported the program in Springdale had withdrawn their support due to the wide net that the 287(g) officers had cast, and the program's broad impacts on local residents, including schoolchildren. The paper ends with policy recommendations and general observations about potential impacts of 287(g) operations on cities, immigrant communities, and children.

Immigration and Local Policing: Results from a National Survey of Law Enforcement Executives

by Scott H. Decker, Paul G. Lewis, Doris Marie Provine, Arizona State University, and Monica W. Varsanyi, John Jay College of Criminal Justice

One of the most important challenges for law enforcement agencies in many communities is how to respond to immigration and the presence of undocumented residents. Departments often face conflicting pressures from local politicians, federal authorities, community groups, and the private sector. Yet they have little available information to help them make sound policy decisions. This paper reports on the results of a recent nationwide survey of police executives on several issues, including differences between departments and communities and their attitudes about immigration and local law enforcement; relationships with federal immigration and customs enforcement authorities; and the range of policies on immigration policing being developed by cities and departments. The survey also explores levels of commitment to community policing practices and the potential for conflict with enforcement of immigration laws by local police.

About the Police Foundation

The Police Foundation is a national, nonpartisan, nonprofit organization dedicated to supporting innovation and improvement in policing. Established in 1970, the foundation has conducted seminal research in police behavior, policy, and procedure and works to transfer to local agencies the best information about practices for dealing effectively with a range of important police operational and administrative concerns. Our purpose is to help the police be more effective in doing their job. To accomplish our mission, we work closely with police officers and police departments across the country, and it is in their hard work and contributions that our accomplishments are rooted.

The foundation has done much of the research that led to a questioning of the traditional model of professional law enforcement and toward a new view of policing—one emphasizing a community orientation. For example, research on foot patrol and on fear of crime demonstrated the importance to crime control efforts of frequent police-citizen contacts made in a positive, non-threatening way. As a partner in the Community Policing Consortium, the foundation, along with four other leading national law enforcement organizations, played a principal role in the development of community policing research, training, and technical assistance.

The foundation provides a wide range of services to law enforcement agencies and to state and local governments. These services focus on establishing trust through improved accountability, leadership, and professional development and providing tools to help police more effectively manage resources.

Motivating all of the foundation's efforts is the goal of efficient, effective, humane policing that operates within the framework of democratic principles and the highest ideals of the nation.



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U.S. Immigration and Customs Enforcement

STATEMENT

OF

**JOHN P. TORRES
DEPUTY ASSISTANT SECRETARY**

**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

REGARDING A HEARING ON

**“SECURING THE BORDERS AND AMERICA’S
POINTS OF ENTRY, WHAT REMAINS TO BE DONE”**

BEFORE THE

**UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION,
REFUGEES AND HOMELAND SECURITY**

**Wednesday, May 20, 2009 - 10:00 a.m.
226 Dirksen Senate Office Building**

INTRODUCTION

Chairman Schumer, Ranking Member Cornyn, and distinguished Members of the Subcommittee:

On behalf of Secretary Napolitano and Assistant Secretary Morton, I would like to thank you for the opportunity to discuss U.S. Immigration and Customs Enforcement's (ICE) role in securing the border through the investigation and enforcement of the nation's immigration and customs laws.

As the primary investigative agency in the Department of Homeland Security (DHS), ICE protects national security and upholds public safety by targeting transnational criminal networks and terrorist organizations that might exploit potential vulnerabilities at our borders. Recognizing that partnerships are essential, ICE works closely with its domestic and foreign partners at the federal, state, local and tribal level to create a seamless web of border enforcement and a united front to disrupt and dismantle transnational criminal organizations.

While this hearing is focused primarily on border security as it relates to immigration, it is important to note that ICE's experience in investigating border-related crime reveals that the criminal organizations that exploit our immigration and trade systems do so for one reason: profit. Each day, these organizations smuggle contraband, people and goods – whatever the market will bear.

Thus, while immigration enforcement is a key component of ICE's mission, we cannot and do not establish enforcement priorities in a stove-piped fashion. Instead, we target the organizations that exploit our legitimate trade, travel and financial systems with all our enforcement authorities to ensure that cross-border crime is attacked from every

possible angle. Indeed, the recent escalation of violence by drug cartels and other criminal organizations just over our border with Mexico demonstrates this point in very stark terms. As Secretary Napolitano has recently testified, the violence in Mexico is not only an international threat; it is a homeland security issue in which all Americans have a stake.

The cartels that Mexican authorities are battling are the same criminal organizations that put drugs on our streets and use violence as a tool of their trade. Illegal drugs, money and weapons flow both ways across our border and inextricably link the U.S. and Mexico in our efforts to combat the drug cartels. Our two countries share a nearly 2,000 mile-long border, billions of dollars in trade, a commitment to democracy and the need to prevail against the transnational threats of organized crime.

We, as a DHS family, are not in a wait-and-see mode. The violence along our southwest border requires a comprehensive and bilateral effort. In response, Secretary Napolitano issued an Immigration and Border Security Action Directive in January 2009 to focus on this violence using the Department's wide-ranging authorities.

Additionally, on March 24, DHS announced several southwest border initiatives designed to crack down on Mexican drug cartels through enhanced border security. The plan calls for additional personnel, increased intelligence capability and better coordination with federal, state, local and Mexican law enforcement authorities to target illegal guns, drugs and cash.

PARTNERING WITH FEDERAL, STATE, LOCAL AND TRIBAL LAW ENFORCEMENT

The partnership between federal, state, local and tribal law enforcement in the border region is essential to securing our nation against the threat of cartel violence. Law enforcement agencies at all levels of government have significant roles to play both in addressing the current border violence and in preparing for scenarios where violence in Mexico could further impact the United States. Law enforcement agencies at the state, local and tribal level have long fought border violence, and have deep operational knowledge of the border region. Confronting a multifaceted threat like border violence means that federal agencies must constantly collaborate and coordinate with our state and local partners by sharing resources and information.

With this in mind, ICE works with its federal partners to collaborate with state and local governments in various ways. For example, in 2006, DHS created Border Enforcement Security Task Forces (BEST), which are led by ICE. BEST is an innovative model for collaborative law enforcement. The 15 BESTs that currently exist include the participation of ICE; CBP; the U.S. Coast Guard; the DHS Office of Intelligence and Analysis; the Drug Enforcement Administration (DEA); the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF); the Federal Bureau of Investigation (FBI); the U.S. Attorney's offices; and state and local law enforcement agencies. Mexican law enforcement agencies also participate in BEST, and the government of Mexico has agreed to provide representatives to every BEST team on the southwest border.

The BEST model has been successful. ICE, with the help of our partners, has cracked down on arms trafficking, human smuggling, bulk cash smuggling and narcotics

smuggling organizations. These efforts have disrupted cartel operations in both the United States and Mexico.

Since July 2005, the efforts of BEST teams, working in conjunction with the Department of Justice (DOJ) and other law enforcement agencies, have been responsible for 2,238 criminal arrests, 2,924 administrative arrests, 1,014 indictments and 846 convictions. In addition, BESTs have seized approximately 9,070 pounds of cocaine, 179,739 pounds of marijuana, 702 pounds of methamphetamine, 99 pounds of crystal methamphetamine, 1,161 pounds of ecstasy, 243 pounds of heroin, 97 pounds of hashish, 22 pounds of opium, 2,075 weapons, 820 vehicles, seven properties and \$24.7 million in U.S. currency and monetary instruments.

I would like to share a few of our successes with you: the discovery and repatriation by the El Paso BEST of one of Mexico's top ten most wanted fugitives; the arrest by the Laredo BEST of a weapons trafficker supplying cartels with assault rifles used to murder Mexican police officer Navarro Rincon and others; the arrest by the Laredo BEST of a member of the Mexican Mafia gang in possession of approximately 897 pounds of smuggled marijuana after he attempted to run over a Texas Department of Public Safety officer; and the arrest by the Los Angeles Seaport BEST of an arms trafficker and seizure of 38 military style weapons.

The success of the BEST model demonstrates that we should be doing more to use this collaborative approach to tackle border crime. On this front, DHS has shifted investigators to these task forces by increasing the number of agents working on BESTs from 95 to 190. This greatly expands our ability to work with local law enforcement on cartel-related crime occurring on the U.S. side of the border.

WORKING WITH MEXICAN AUTHORITIES

Assisting Mexico in its battle against drug violence requires strong coordination with Mexican law enforcement to ensure that Mexico and the U.S. are operating together in combating this transnational threat. ICE continues to engage Mexican authorities on a number of levels in our joint efforts to combat border violence.

ICE's Border Liaison Officer (BLO) Program, for instance, allows ICE to more effectively identify and combat cross-border criminal organizations by providing a streamlined information- and intelligence-sharing mechanism. The BLO Program creates an open and cooperative working relationship between the U.S. and Mexican law enforcement entities. ICE has recently quadrupled the number of officers in the Border Liaison Program by redeploying agents to the southwest border.

ICE currently partners with the government of Mexico on Operation Armas Cruzadas, which cracks down on arms smugglers. The ICE Attaché Office in Mexico City has coordinated the establishment of vetted Special Investigative Units of Mexican officers. ICE and ATF agreed during a recent arms trafficking summit in Cuernavaca, Mexico that special agents from both agencies would work with these vetted units to investigate and prosecute border crimes such as smuggling and firearms trafficking. Mexican agents also actively participate in BEST on the southwest border to great effect.

We have strengthened our coordination with the government of Mexico by increasing ICE Attaché personnel in Mexico by 50 percent, sending additional special agents to Mexico City, Tijuana, Hermosillo, Ciudad Juárez and Monterrey. Through our Attaché in Mexico City and associated sub-offices, ICE assists in efforts against

transnational drug trafficking, weapons smuggling, human smuggling and money laundering syndicates in Mexico. ICE Attaché personnel work on a daily basis with Mexican authorities to combat these transnational threats, and these efforts have been enhanced by additional officers.

ILLEGAL WEAPONS AND BULK CASH SMUGGLING INTO MEXICO

A large number of weapons recovered in Mexico's drug war are smuggled illegally into Mexico from the United States. Clearly, stopping this flow must be an urgent priority.

President Calderón has identified the illegal flow of weapons from the United States as one of the biggest security threats to his country. Stopping weapons smuggling is a particular challenge, both because of the nature of the southwest border and because much of the smuggling occurs in small shipments of a few weapons at a time. ICE is uniquely positioned to address this challenge.

In June 2008, ICE, along with CBP and other federal, state and local partners, launched Operation Armas Cruzadas, a partnership with the government of Mexico to fight cross-border arms smuggling. Under Armas Cruzadas, ICE has taken an intelligence-driven, systematic approach to arms trafficking investigations. As part of this effort, ICE initiated a Weapons Virtual Task Force to create virtual communities where law enforcement can rapidly share intelligence and communicate in a secure environment through the Homeland Security Information Network (HSIN). ICE also created a U.S.-vetted Arms Trafficking Group of Mexican officers.

Since its inception, Operation Armas Cruzadas has resulted in the seizure of 1,441 weapons, more than \$6 million, 122,416 rounds of ammunition and arrested 338 individuals on criminal charges resulting in 94 criminal indictments and 51 convictions.

In addition to addressing weapons smuggling, ICE had partnered with CBP to combat the illegal movement of cash across the southwest border. One reason drug cartels pose such a dangerous threat is their extensive monetary resources. The U.S. must interrupt that illegal flow of money. Operation Firewall, led by ICE, addresses the threat of bulk cash smuggling. ICE targets those individuals and organizations that exploit vulnerabilities in financial systems to launder illicit proceeds.

Operation Firewall produced immediate results. On the first day of operations in 2005 at the Benito Juárez International Airport in Mexico City, Mexican authorities seized \$7.8 million en route to Cali, Colombia concealed inside deep fryers, rotisseries and voltage regulators. Other notable seizures include \$7.3 million seized inside rolls of fabric and plastic and \$4.7 million concealed inside air conditioning equipment and metal piping destined for Colombia. Since its inception, Operation Firewall has resulted in the seizure of over \$195 million, including over \$64 million seized overseas and 452 arrests.

On June 26, 2008, Rafael Ravelo, a member of a Mexican-based narcotics trafficking organization, was sentenced to 126 months of incarceration and ordered to forfeit nearly \$1.15 million. This sentence was the result of the ICE-led Operation Doughboy, an Organized Crime Drug Enforcement Task Force Program investigation that was initiated prior to Operation Firewall, based on a bulk cash smuggling interdiction. This joint U.S./Mexico investigation involved the monitoring of 18 phone

lines of the heads of a Mexican narcotics trafficking organization and began when ICE agents in 2003 successfully linked a \$149,000 bulk cash seizure by the Texas Department of Public Safety to the narcotics trafficking organization.

ICE also recently established a Trade Transparency Unit with Mexico to identify cross-border trade anomalies, which are often indicative of trade-based money laundering. Under this initiative, ICE and law enforcement agencies in cooperating countries exchange import and export data and financial information. ICE's efforts led to more than \$50 million in cash seizures in Fiscal Year 2008.

CRIMINAL AND FUGITIVE ALIENS

Identifying, arresting and removing criminal aliens remains a top priority for ICE. ICE is the primary agency responsible for locating and removing criminal aliens within the United States. Under the Secure Communities Program, ICE works to identify criminal aliens in federal, state and local custody and those at-large, prioritize the removal of dangerous criminal aliens, and improve our current enforcement processes.

Through the Secure Communities Program, state and local law enforcement have the ability to search a subject's criminal history and immigration information automatically at the time of booking. This saves time, improves accuracy and gives our state and local partners a powerful tool to identify criminal aliens in their custody so that appropriate action can be taken for those with a criminal conviction. Currently, biometric identification technology has already been deployed to 23 counties along the southwest border to support information sharing.

An important component of Secure Communities is to prevent the re-entry of criminal aliens. Operation Repeat Offender is an initiative by ICE Office of Detention and Removal Operations (DRO) that is in place in some U.S. Attorney's Offices to prioritize the prosecution of aliens who illegally return to the United States after removal. If convicted of federal immigration charges, these criminal aliens serve their sentence in federal custody. ICE has assigned lawyers to many U.S. Attorneys' Offices across the country to aid with the prosecution of these cases in their role as Special Assistant U.S. Attorney's (SAUSAs). The program's goal is to deter illegal reentry.

ICE also continues its efforts to identify and remove criminal alien gang members as part of Operation Community Shield. Since the program's inception, ICE agents working in conjunction with federal, state and local law enforcement agencies nationwide have arrested a total of 11,106 street gang members and associates.

ICE's National Fugitive Operations Program (NFOP) is also working to reduce the nation's fugitive alien population, with a specific emphasis on aliens who pose a threat to national security and community safety. ICE has significantly increased its fugitive operations teams from eight teams in 2003 to the 104 teams operating today. Additionally, ICE has developed the Fugitive Operations Support Center (FOSC), which provides information support to teams nationwide.

In Fiscal Year 2008, fugitive operations teams were responsible for more than 34,000 arrests. In Fiscal Year 2009 to date, these teams have arrested nearly 6,000 criminal aliens who are fugitives. Overall, our nation's fugitive alien population fell by 37,000 individuals last fiscal year.

HUMAN SMUGGLING AND TRAFFICKING

Criminal smuggling and trafficking organizations are not constrained by international borders, operating in countries of origin, transit countries and destination countries such as the United States. ICE proactively attacks groups engaged in human smuggling and trafficking by initiating investigations beyond the U.S. borders. Organizations can charge thousands of dollars to smuggle aliens into the U.S., including those individuals who could pose a threat to the country. Accordingly, ICE works aggressively with non-governmental organizations to identify trafficking victims, bring smugglers and traffickers to justice, and increase public awareness of modern-day slavery.

ICE recognizes that success in combating alien smuggling, trafficking in persons and criminal support to clandestine terrorist travel requires working with other agencies in order to turn intelligence into action. ICE is a major participant in, and supporter of, the interagency Human Smuggling and Trafficking Center (HSTC), which targets human smugglers, human traffickers and terrorist travel facilitators. The Director of the HSTC is an ICE Supervisory Special Agent.

ICE has identified various methods and routes used by criminal networks to smuggle people into the United States. To target these smuggling methods and routes, ICE and DOJ formed the Extraterritorial Criminal Travel (ECT) Strike Force in June 2006 and combined our investigative, prosecutorial and intelligence resources to target and aggressively pursue, disrupt and dismantle foreign-based criminal travel networks. Complementary to the ECT program is the pivotal role ICE continues to play as a co-chair of the targeting project of the Interagency Working Group on Alien Smuggling, in which working with our partners in the intelligence community, we identify and target the most

dangerous international human smuggling organizations for investigation and prosecution, especially those that pose a threat to our national security. Much of the work is classified, but the effort has lead to a number of significant prosecutions since 2001.

In August 2006, the ECT Strike Force initiated an alien smuggling investigation of Mohammed Kamel Ibrahim and Sampson Boateng for smuggling aliens from Ethiopia, Eritrea and Somalia. These men were responsible for recruiting aliens, establishing travel routes and facilitating the aliens' transportation into the United States. Additionally, these men obtained both fraudulent and genuine travel documents for the smuggled aliens from a corrupt foreign government official. As a result of our investigation, Ibrahim and Boateng plead guilty to alien smuggling violations, and were sentenced to prison.

ICE recognizes that combating transnational alien smuggling networks does not stop with the arrest and conviction of alien smugglers. Although we have demonstrated success in this area, we have also focused on criminal organizations and individuals who commit identity or benefit fraud.

STATE AND LOCAL LAW ENFORCEMENT UNDER 287(g)

ICE also has continued to expand its partnerships with state and local law enforcement under the 287(g) Program, which gives specially trained officers authorization to perform immigration enforcement duties under the supervision of ICE agents and officers. ICE has 66 active Memoranda of Agreement (MOAs) with law enforcement agencies in 23 states. As of May 2009, ICE's 287(g) partners have encountered over 109,000 aliens who were screened for removability.

This program continues to be an effective force multiplier for our efforts. For this reason, it is vitally important that the program has strong oversight and remains free of abuse. In the past few years, the 287(g) Program has been the subject of much media attention. To address many of the concerns, ICE is redrafting the MOA template to increase oversight and supervision as well as align the goals of state and local law enforcement participating in the program with ICE priorities and guidelines. In addition to the MOA, ICE has issued credentials to state and local 287(g) partners and is drafting a policy mandating refresher training for all active 287(g) officers. With these efforts, DHS is carefully reviewing the recommendations provided in the January 2009 report by the Government Accountability Office (GAO). Finally, we are committed to working with stakeholders to address concerns about racial and ethnic profiling and other abuses in this and other enforcement programs.

WORKSITE ENFORCEMENT

Opportunities for employment remain a primary motivation for aliens seeking illegal entry into the United States. As noted recently by Secretary Napolitano, ICE's worksite enforcement program targets unscrupulous employers who prey upon these aliens by subjecting them to poor or unsafe working conditions or paying them sub-standard wages. ICE's multi-faceted worksite enforcement strategy targets those employers whose business model is based upon exploiting an unauthorized workforce and those who place our national security at risk by employing unauthorized workers in sensitive industries in our nation's critical infrastructure.

On April 30, 2009, the new Worksite Enforcement Strategy was released, marking a shift in how ICE conducts worksite enforcement. The goal of the strategy is to 1) penalize employers who knowingly hire illegal workers; 2) deter employers who are attempting to hire illegal workers; and 3) encourage employers to take advantage of compliance tools and best practices. In addition, ICE will continue to fulfill its responsibility to arrest and process for removal illegal workers encountered during worksite enforcement operations.

The strategy emphasizes both the criminal investigation of employers and the use of administrative tools such as Form I-9 audits and civil fines. The strategy maintains the mission of protecting critical infrastructure by identifying and removing unauthorized workers.

ICE believes the most effective deterrent involves criminal prosecutions, the seizure of assets and the imposition of meaningful civil penalties upon employers who use and profit from the labor of unauthorized aliens. Administrative inspections and fines are a critical component of ICE's overall national strategy aimed at reducing illicit employment as a motivating factor for illegal immigration and to garner employers' voluntary compliance with the nation's immigration laws. Based on our comprehensive strategy to address worksite enforcement, we believe that we are creating the conditions of a culture of industry compliance.

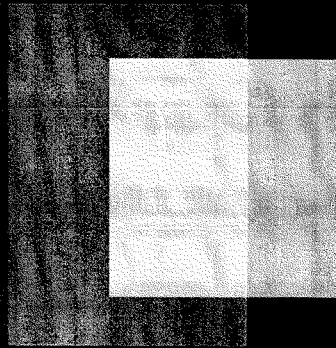
CONCLUSION

ICE is committed to working with this Subcommittee and Congress to address the significant challenges we face to secure the border through the enforcement of our nation's immigration and customs laws. I thank the Subcommittee for its support of ICE

and our law enforcement mission. I would be happy to answer any questions that you may have at this time.

Accountability, Community Security and Infrastructure on the U.S.-Mexico Border

Policy Priorities for 2009-2010



U.S.-Mexico Border and Immigration Task Force

April 2009, Washington, D.C.

INTRODUCTION

The U.S.-Mexico Border and Immigration Task Force is comprised of over 50 individuals and organizations spanning 4 states and comprised of local elected officials, law enforcement, faith leaders, business, labor, academics and community advocates. The diversity of the coalition finds its strength in the notion that that people from very different perspectives can agree when assumptions about “enforcement” are challenged. The Border Task Force has repeatedly demonstrated over the course of many years that broad support exists for immigration reform and border security that is smart, accountable, and fiscally responsible.

The Task Force offers a new paradigm for immigration and border enforcement. It challenges dated ideas about enforcement and recognizes that the “border” is a dynamic concept, that border communities have important ties to both the United States and Mexico, and that these ties create a unique set of opportunities and challenges that affect both the border areas and the broader national interest. The Task Force’s work is built around ideas grounded in the complex realities of border life and a practical understanding that border and immigration policies must be formulated and implemented in ways that respect the rights and needs of border communities.

In November 2008, the U.S.-Mexico Border and Immigration Task Force released a report with over 70 specific recommendations for improving border and immigration enforcement policies. Since that time, the Task Force has worked to refine its recommendations and has prioritized three core areas in which to concentrate its work: accountability and oversight of border and immigration enforcement; community security and prevention of border violence; and infrastructure and ports of entry.

Their refined recommendations are the result of several months of hard work and multiple strategy sessions along the US border communities. These recommendations and policies can substantially improve security and safety in the border region and in the nation as a whole. As the debate over border issues becomes more prevalent, and comprehensive immigration reform moves to the top of the President’s agenda, the expertise of border leadership is more critical than ever to the development of appropriate and meaningful border security measures. Border communities must be engaged by lawmakers in finding and creating solutions and being a part of the decision-making process. The following recommendations must be a part of discussions on both the legislative and administrative reform of border and immigration policy.

I. ACCOUNTABILITY AND OVERSIGHT FOR BORDER AND IMMIGRATION ENFORCEMENT

It is critical that the civil and human rights of all people along the U.S.-Mexico border, regardless of their race, ethnicity or citizenship status, are respected. Policies and practices that target migrants and border residents and that concentrate federal agents along the border can lead to human rights abuses if law enforcement officers and agencies are not held accountable to the communities in which they operate. Accountability and oversight should be viewed as assets rather than limitations on effective law enforcement and public security because they assist law enforcement agencies in focusing their attention and resources. A relationship of mutual trust between communities and law enforcement organizations meaningfully enhances community and national security through greater cooperation and open sharing of information.

Recommendations:

1. Create a United States Border Enforcement and Immigration Review Commission (the "Commission"). The Commission should be an independent entity established to assess, monitor and investigate all federal border and immigration policies, projects, programs, and activities, both those of DHS—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Citizenship and Immigration Services (USCIS)—and those of other relevant agencies. It should be vested with legal authority to provide recommendations regarding federal immigration and border security policy, enforcement, and complaint procedures, and it should be empowered to hold federal immigration agencies accountable. The Commission's broad purposes should be to require due process and equal protection of the law for all those present at and near the border, to promote best civil and human rights practices in border law enforcement, to enhance internal capacities within border agencies, and to strengthen relations between the community and government agencies.

The Commission should be composed of a diverse group of individuals who understand the complexities of the border, and a majority of Commission members should be border stakeholders and residents.

The Commission must have, at a minimum, three powers: (1) investigatory power, including the power to subpoena, (2) auditing power, and (3) legal power.

The Commission must be able to formulate and fund an effective outreach strategy to border communities. The Commission should report annually to Congress.

In addition to its primary mandate, the Commission should conduct an independent study that examines whether border policies and agencies are accomplishing their stated goals, whether those goals are appropriate agency functions and recommend changes and alternatives. Such a study would consider (1) the quality and capacity of agency oversight, accountability, and management regarding challenging issues such as use of force, potential for abuse, potential for corruption and illegal activity, remoteness, and relative invisibility of field activities; (2) the degree to which government officials have been engaged in inappropriate action, malfeasance, or illegal activity; and (3) other critical policy-assessment questions.

2. Improve the complaint process. Although the creation of the Commission would provide the opportunity for a more robust complaint process, in the interim, the Department of Homeland Security must take steps to quickly review and investigate complaints. The DHS Office for Civil Rights and Civil Liberties should be empowered to ensure that the mandate, resources, and staffing to investigate and resolve complaints and to respond to public inquiries regarding the status of complaints is fulfilled. The Commission and/or the DHS Office for Civil Rights and Civil Liberties should ensure that complaint procedures are accessible, transparent, consistent, effective, and fair. Complaints should be publicly accessible records and copies of complaints and their resolution should be permanently preserved.

Essential characteristics of a revised and effective complaint process include:

a) A uniform complaint procedure with definite specification of to whom, how, and where complaints are to be filed, tracked, and resolved for all Border Patrol stations and Ports of Entry, from San Diego to Brownsville.

b) Protections that ensure if a person complains, she or he is not penalized (similar to the protections provided to a plaintiff in a "whistle-blower" case, who cannot be terminated for raising an issue). Complainants should be protected from arrest and removal proceedings for immigration violations, whether directly or indirectly detected due to the filing of the complaint. Complainants should receive full assistance from DHS in filing complaints, including language assistance and accurate and complete responses to their questions.

c) The creation of a national, standardized database that tracks and analyzes complaints and their resolution.

3. Ensure that the funding of oversight endeavors is comparable to those of other Federal agencies and commensurate with the size and scope of the Department of Homeland Security operational budget. The size and resources of the DHS Office of Inspector General and the DHS office of Civil Liberties

and Civil Rights must reflect the explosive growth of DHS. DHS policy orientation and organizational capacity must be strengthened to identify, investigate, and terminate abusive or corrupt actions by federal officers. To be credible and effective, oversight must be properly funded to reflect authorities' commitment to ensuring that all agency operations take place strictly within legal boundaries.

4. Require human rights certification of local and federal agents. Department of Homeland Security officers and state and local law enforcement officers working in the border region should receive comprehensive and consistent training in ethics, civil rights, human rights, cultural sensitivity, community relations, and non-lethal approaches to incidents. Training should occur both in the academy curriculum and at regular intervals on the job and should be conducted with input from the Department of Justice Civil Rights Division and the DHS Office for Civil Rights and Civil Liberties. DHS leadership must develop consistent humane treatment guidelines, with high standards, for all operations (sectors, etc.) along the border. Supervisors should be made accountable for both delivering human rights certification and holding officers in their unit responsible for following guidelines and best practices.

II. COMMUNITY SECURITY AND PREVENTION OF BORDER VIOLENCE

Community security is an integral part of both national and border security. True community security builds on a vision of the border that sees law enforcement--federal, state, and local--as contributing to the safety and security of residents of the borderlands, and of the whole United States. It also speaks to working with partners in Mexico regain community security in a cooperative fashion that respects the border's binational culture and relationships. Community safety and security operations should focus on dangerous criminals and traffickers, as opposed to law-abiding undocumented persons, and to be effective, responses must de-link criminal enforcement from civil immigration enforcement. Community security begins with and contributes to the rights and liberties of all peaceful members of a community.

Communities along the border have long experienced the impact of violence generated by organized crime engaged in cross border smuggling of illicit goods, namely narcotics and firearms, as well as humans. The Border Task Force believes it is counterproductive to exaggerate concerns to suit particular political agendas, such as the justification of harmful immigration policy. It is important to note that:

- The recent violence at the US/Mexico border has not been generated or sustained by immigrant workers, immigrant families or the millions of border residents who live, work, and raise their families in the region.
- Despite mainstream media outlets and congressional representatives' dramatic warnings of the threat of "spillover" violence, we, local law enforcement and elected officials, report that this violence has not crossed our borders as reported.
- In the Mexican border city of Ciudad Juárez alone, over 1,600 people were killed in 2008 in drug cartel-related violence whereas its neighbor sister city, El Paso, is the 3rd safest city of its size in the United States.

This situation suggests that effective protection of U.S. borders lies, not with further militarization of the border region, but by strengthening the internal linkages between community members - citizens, legal residents, and unauthorized residents - and local and federal law enforcement agencies.

Recommendations:

1. Pursue community security and safety policies designed to integrate, protect and engage all members of border communities – citizens, legal residents, and undocumented residents – in efforts to address criminal threats. One of the fundamental principles of effective community policing is that community members must be motivated to work with law enforcement agencies to effectively combat threats to the community. Border communities are a valuable resource to detect and prevent cross-border violence. Special considerations need to be made in the implementation of effective community policing programs in border communities. We recommend:

- a) Strict guidelines limiting the role of local law enforcement agencies in the enforcement of administrative immigration violations to the identification and referral of convicted felons (other than immigration) to DHS. To this end, abolish 287(g) programs and redirect Operation Stonegarden resources and personnel to focus on violent and organized crime.
- b) Active inclusion of community members and leaders in planning border security, immigration, and other border law enforcement programs and projects, including congressional field hearings and delegations to engage directly with border communities.

- i. Perform community-impact studies. Community-impact studies should be required prior to all significant local, state, and federal security and law enforcement initiatives impacting border communities. Such studies should include meaningful consultation with the local community and consider the social, cultural, environmental, and economic impacts of policy implementation.

- c) Enhancement of community/law enforcement relationships through the rigorous protection of the human rights and civil liberties of all community members, regardless of immigration status through:

- i. Effective human and civil rights training of federal law enforcement officials assigned to the border region
- ii. A transparent, prompt and effective grievance procedure
- iii. Prompt and thorough investigation and, when appropriate, sanction of law enforcement officials who commit human or civil rights abuses
- iv. Community engagement in oversight mechanisms to monitor law enforcement operations within their community

2. Require DHS to plan for border security using comprehensive risk assessment methodologies,¹

¹ On comprehensive risk assessment, see Government Accountability Office [GAO], "Department of Homeland Security: Progress Report on Implementation of Mission and Management Functions," Report GAO-07-454, August 17, 2007, at p. 2 of summary statement, accessed at <http://www.gao.gov/new.items/d07454.pdf>

with transparent procedures and recommendations that are made public. DHS and other federal agencies should plan and allocate resources proportionate to the degree of threat – noting distinctions between violent crime and serious risk to human safety and indiscriminate enforcement of civil immigration violations.

3. Encourage DHS and ATF to target additional resources for state and local law enforcement approaches to firearms interdiction, money laundering and violence prevention activities. For DHS, redirect resources aimed at the enforcement of administrative immigration violations, worksite and community raids towards carefully tailored border crime reduction/prevention programs, including programs to curb arms trafficking. Ensure that federal funding provided to combat criminal activity is strictly monitored to ensure that it is being used exclusively for its primary and intended purpose and not for identifying individuals for civil immigration enforcement. Localities that inappropriately utilize federal funding for unintended purposes should lose such funding.

4. Federal support of corridor programs and intelligence fusion centers responding to border criminality, smuggling, and violence should be carefully monitored under the following guidelines in order to protect the civil liberties and civil rights of borderlands residents. We recommend:

a) Conduct a review of existing fusion center models, including an evaluation of the cost- benefit analysis based on effectiveness of these centers for identifying real threats and the impact these centers have on privacy and civil liberties. The results of fusion center approaches should be weighed against the effectiveness of community policing and other traditional policing and intelligence gathering methods for combating crime. The mission of each fusion center must be clearly defined with regular reviews to assure that the objectives of the intended mission continue to be on target. Centers will be required to issue regular reports regarding the type of information being collected, how it is being used, by whom, and with whom it is being shared.

b) Federal regulatory mechanisms for oversight

and accountability need to be developed, including subjecting fusion centers to the federal Freedom of Information Act and state and local open records laws. Clear guidelines must be developed regarding to specify who has access to information levied by fusion centers and under what circumstances. Minimization procedures that prevent the intentional collection, retention, and dissemination of private information where there is no reasonable indication of criminal activity must be developed.

c) Military personnel and private sector entities should be excluded from participation in law enforcement operations and investigations conducted by fusion centers.

d) Individuals should have some form of due process before arbitrarily being placed on a watch list or listed in other security documents.

5. The military is unsuited for frontal involvement in support of border law enforcement.

a) Immediately withdraw U.S. military and National Guard personnel from all armed operations in support of civilian law enforcement within 25 miles of the border.

b) Per the Posse Comitatus Act, Military forces, including the National Guard, should not be engaged in law enforcement, either directly or indirectly, on domestic soil.

c) Recent amendments to the federal Insurrection Act, which sets forth exceptions under the Posse Comitatus Act, stipulate that the President can summon the military for domestic intervention to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition. The Administration, Congress, and the courts should clarify that this “public order” exception does not cover and should not be invoked for normal border law-enforcement activities (immigration, narcotics, criminal activity), as it might be for an “emergency” equivalent to a natural disaster or major public disorder.

- 6. Use human rights and civil rights as a policy standard.** The cycle of violence at the border can only be stopped if the government recognizes the civil and human rights of border residents. Any legislation or policy that fails to recognize fundamental rights is destined to fail and undermines the basic premise of security for the country.

III. INFRASTRUCTURE AND PORTS OF ENTRY

Ports of Entry play a critical role in the cross-border movement of people and goods as well as economic and national security. According to a June 2005 study developed by the San Diego Association of Governments, over sixty million crossings are made annually in both directions via the three Ports of Entry located in San Diego County, with the average border crossing at that time taking 45 minutes. The economic impact that long border delays have on the Tijuana/San Diego border area alone is astonishing: "over 3 million potential working hours in San Diego County are spent in delays at the border, averaging about 45 minutes per work trip, which may result in \$42 million in wages lost. The overall impact at the State level, given that 5% of the trips are headed outside the San Diego region, is over \$1.32 billion in addition to the \$44.3 million in income loss for work trips." The San Diego example is representative of all Ports of Entry spanning the border.

When the Department of Homeland Security took over the administration and enforcement at the nation's land ports, residential and commercial border crossers, noted a dramatic increase in waiting times and an increase in inappropriate, and often unlawful, behavior by Customs and Border Protection (CBP) agents. Abuse-of-authority complaints against CBP agents reflected that officials were targeting and racially profiling U.S. citizens and other individuals of Latino descent entering through the ports of entry for a variety of issues. The complaints primarily alleged verbal abuse, physical abuse, sexual harassment, arbitrary detentions, destruction of documents, and denial of entry.

Port management issues demand a significant reform. A 2008 study in the Journal of Homeland Security and Emergency Management confirms that current CBP personnel practices at Ports of Entry are inconsistent and, thus, undermine the public security and law enforcement goals of port inspections. Furthermore, a significant number of border crossers perceive treatment at Ports of Entry to be arbitrary and unfair. Port management issues demand significant reform.

Recommendations:

- 1. Expedite border crossing at Ports of Entry.** DHS must invest in improving infrastructure and technology at the Ports of Entry in order to expedite border crossings. Programs such as SENTRI lanes and car-pool lanes should be increased. Ports of Entry should also provide access to basic human services (adequate restrooms, water, shade, etc.).
- 2. Improve staffing levels and training for port personnel.** Ports of Entry are understaffed, contributing to long wait times and inadequate cargo/container inspection. Congress should appropriate sufficient funding for their proper operation. In addition, DHS should ensure that all port personnel are consistently trained in legal, human, and civil rights compliance during inspections procedures, including question-

ing, searches, and handling of documents. Consistent training procedures and job evaluations that emphasize evidence-based inspections rather than impermissible profiling should be developed and implemented. Training procedures and job evaluations should emphasize respectful and effective interpersonal interaction and should be consistently applied to all personnel at all ports.

3. Promote due process and an accessible, transparent and fair CBP complaint process. CBP Primary and Secondary Inspection booths should clearly post their mission statement, regulations regarding required documents to enter the U.S., and information about submitting a complaint. Complaints should not result in people being “flagged” by CBP. Additionally, DHS should significantly scrub and improve watch lists to minimize the detention or denial of entry of individuals wrongly placed, or wrongly believed to be, on those lists and provide sufficient due process. Finally, we recommend that Congress establish baseline search and seizure rights at ports.

4. Clarify and publicize the documents necessary to enter the U.S. Border residents report being denied entry to the U.S. and receiving inconsistent information from CBP agents regarding the documents needed to enter the United States. CBP must publicize and respect agency policies regarding the documents that various legal categories of border crossers must present when entering the United States and the agency must be consistent in their application of these regulations. This requires improved communication between CBP and the Department of State. DHS should postpone the date for final implementation of WHTI until the following issues are addressed: (a) how to handle people without birth certificates (i.e. accept midwife produced documents); (b) how to mitigate expenses for families who would need individual passports. We recommend to explore idea of issuing family passport cards.

5. Invest in technology, infrastructure, and staffing at ports of entry to ensure focused interdiction and detection of southbound money and arms and northbound drugs.

a) Firearms interdictions should be conducted independently of immigration interdiction activities.

b) Southbound checkpoints should be placed at the actual border or existing ports of entry. Southbound inspection should not be used to add another layer of checkpoints, roadblocks, or immigration sweeps in the interior of the United States, including in the border region.

c) ICE or CBP should not be deployed to southbound firearms checkpoints located separate from Ports of Entry. Instead, local law enforcement officials should staff any interior southbound checkpoints in coordination with ATF as appropriate, with federal funding resources to supplement this activity.

d) The mission of all federal, state and local agents placed at southbound checkpoints must be clearly defined and limited to confronting gun trafficking and money laundering. Agencies participating in southbound checkpoints should create and provide guidance to agents regarding standard operating procedures and policies to ensure protection of civil and human rights.

e) Grievance procedures for southbound checkpoints, including those at Ports of Entry, must be clearly defined and posted as public notices. Since the initiation of southbound checkpoints in the San Diego sector, advocates have reported a marked increase in grievances for civil and human rights violations.

f) Allocate sufficient resources for the ATF to aggressively engage in identifying, investigating and sanctioning of Federal Firearms License holders in Border States who are a sizeable source of firearms trafficked to Mexico.

6. The EPA must conduct environmental assessments at Ports of Entry. The federal government should conduct environmental assessments to determine the impacts of waiting traffic on air pollution and other potential environmental threats. The assessment should include recommendations on infrastructure, staffing, and inspections policies that could mitigate negative impacts.

US-Mexico Border and Immigration Task Force

For more information and full list of members please visit www.bordertaskforce.org

Published by the Border Network for Human Rights, the Border Action Network, and the U.S.-Mexico Border and Immigration Task Force (2009). Released in collaboration with the National Immigration Forum and the Latin America Working Group. We also would like to recognize the contributions made to this report by members of the Border Working Group (listed below). April 2009.

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U.S. MEXICO BORDER AND IMMIGRATION TASK FORCE
www.bordertaskforce.org

May 27, 2009

Chairman Charles E. Schumer
 Subcommittee on Immigration, Refugees, and Border Security
 Committee on the Judiciary
 United States Senate

Submission for the official record to the hearing: "Securing the Borders and America's Points of Entry, What Remains to Be Done"

Dear Senator Schumer and Members of the Immigration Subcommittee:

The US-Mexico Border and Immigration Task Force commends you for your attention to border issues as you begin work on immigration reform in 2009. We thank you for holding the hearing on May 20, and we would like to contribute our Border Policy Report: "Effective Border Policy: Security, Responsibility and Human Rights at the U.S.-Mexico Border" and our 2009-2010 Policy Priorities: "Accountability, Community Security, and Infrastructure on the US-Mexico Border" for the record.

Several messages emerged from the hearing that deserve further reinforcement and clarification. First, the border is a 2000 mile stretch of land that encompasses enormous geographic and demographic variety. Some regions have very little traffic, and some are extremely crowded, some of the border is urban, some rural, and different business activities take place in different regions. Most of all, many of the communities are closely interconnected across the international boundary, through family, business, community, and culture. Federal law and administration must account for this variety in its border policies, or else we will be unable to effectively welcome visitors into the United States, and our own security will be compromised.

To that end, the Border Task Force recommends the establishment of a Border Commission, specifically charged with monitoring the activities of federal agencies as they are applied at the borders of the United States. A commission would provide for accountability to border communities as well as an advisory body to develop effective and region-specific border management plans. Ultimately, border security cannot be achieved without connection and accountability to border communities.

Additionally, concerns about unlawful immigration must be distinguished from concerns about crime and violence, as well as regular trade and lawful entries. Effective management of the US-Mexico border will ultimately also depend upon thorough reform of our immigration system. However, immigration is not the only activity transpiring at the borders, and despite its high profile, it is one of the least dangerous. Increased enforcement efforts to prevent smuggling and criminal activities are not appropriate tools for immigration management. Revision of the immigration

system, labor flows, and operations at ports of entry will have the greatest impact on undocumented migration, while increased law enforcement and security operations can target smuggling and criminal enterprises. When we talk about secure borders and the success of enforcement measures, it is crucial to recognize these different aspects of security and correspondingly varied measures for effectiveness.

In particular, local law enforcement should be kept separate from immigration law enforcement. The recent Police Foundation Report, "The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties," concluded that the costs of the program implemented by ICE under Immigration and Nationality Act § 287(g) outweigh the benefits. The loss of trust of police in immigrant communities if police are deputized to enforce immigration law results in less reporting of crime, more victimization of immigrants, and poorer relationships between the police and the public. If anything, local police involvement with federal immigration enforcement should be limited to dangerous violent offenders, the Police Foundation Report concluded. Conflation of the issue of undocumented border crossers and organized crime will prevent successful and responsive border security.

Finally, the experts testifying in the hearing unanimously agreed that the vast amount of activity on the border occurs at ports of entry, not between them. This is true for business and trade, migration, smuggling, visitor entry, and potential criminal threats. The Border Task Force is concerned that despite this clarity of fact, the budget for Customs and Border Patrol in fiscal year 2010 funds nearly twice as much border security between ports than border security at ports of entry. Moreover, that only includes the Customs and Border Patrol budget, and does not take into account substantial Department of Justice and Department of State activities relating to border infrastructure, management, and investigations. If Congress is serious about developing realistic and targeted border security strategies, adequate resources should be directed where they are needed, not to developing infrastructure between ports of entry, where very little activity occurs.

The US-Mexico Border and Immigration Task Force urges Congress to consider the attached Border Policy Report and Policy Priorities for 2009-10 in designing strategic and effective policies to secure the border and manage ports of entry. The Task Force represents a broad coalition of community organizations, elected officials, law enforcement officers, faith-based groups, trade organizations, and academic experts who stand ready to provide their expertise to Congress and federal agencies in improving border security, trade, immigration, and the safety of border communities and America at large.

Thank you for your attention and continued work on immigration reform.

The US-Mexico Border and Immigration Task Force

U.S. MEXICO BORDER AND IMMIGRATION TASK FORCE

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U.S.-Mexico Border Policy Report

*"Effective Border Policy: Security, Responsibility
And Human Rights at the U.S.-Mexico Border"
November 2008, Washington, D.C.*

Cover: A boy looks through the border fence from the Mexican side.

The fence is one part of the securitization that has occurred in the U.S. It also represents a violation of migrants' human rights as outlined in the U.S. Constitution and several international conventions.

Published by the Border Network for Human Rights, the Border Action Network, and the U.S.-Mexico Border and Immigration Task Force (2008). Release in collaboration with the National Immigration Forum. November 2008.

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U.S.-Mexico Border Policy Report

*"Effective Border Policy: Security, Responsibility and
Human Rights at the U.S.-Mexico Border"*
November 2008, Washington, D.C.

Release and presented by the Border Network for Human Rights, the Border Action Network, and the U.S.-Mexico Border and Immigration Task Force, in collaboration with the National Immigration Forum.

Executive Summary

This U.S.-Mexico Border Policy Report is the culmination of years of effort among border leaders to provide local law enforcement, government and community expertise to the national debate over immigration policy and border security. For too many years, we have witnessed efforts to secure the border that are grounded not in the complex realities of border life but in simplistic sound bites and assumptions that building a wall can somehow keep our country safe. Our conclusions and policy recommendations start with the premise that the "border" is a dynamic concept, that border communities have important ties to both the United States and Mexico, and that these ties create a unique set of opportunities and challenges that affect both the border areas and the broader national interest. Recognizing that millions live and work in U.S. border communities, border and immigration policies must be formulated and implemented in a way that respects the rights of these community members and the needs of their hometowns and cities. When properly carried out, these policies can substantially improve security and safety in the border region and in the nation as a whole.

The Consequences of Increased Militarization of the Border

Over the last two decades, U.S. immigration policy began to focus increasingly on the need to secure the southwest border in order to block the flow of undocumented migrants. Rather than viewing border enforcement as a component of a broader immigration strategy, border enforcement became the strategy, most often expressed as the need to first secure our borders before dealing with broader questions of immigration reform. This approach, however, has failed, costing the country billions of dollars, weakening the autonomy and rights of border communities and their residents, and creating a militarized border that has left the country less secure. Our findings indicate that the consequences of these policies have led to needless suffering and an overall degradation in human rights.

Summary of Recommendations

The U.S.-Mexico Border and Immigration Task Force has developed over 70 specific recommendations for improving immigration enforcement. The vast majority of the recommendations identify specific ways to improve enforcement objectives, reduce the possibility of civil and human rights violations, and engage border communities in creating

solutions to legitimate concerns about violence and security along the border, as well as for calling for an end to misguided and fiscally irresponsible programs, such as the mandatory construction of a physical border wall. Some of these suggestions have already been recognized by Congress and incorporated into proposals such as the STRIVE Act of 2007 and the bi-partisan Senate immigration proposal of 2007, including the creations of the U.S.-Mexico Border Review Commission, the Congressional Report on Border Deaths, the Border Patrol Training Review, Local Community Consultations, and the Office of Detention Oversight. We believe these recommendations can and should be part of any new discussions on legislative reform of border safety.

Our recommendations offer the country an opportunity to revisit the discussions of border enforcement and immigration enforcement more generally. The ability of elected officials, law enforcement officials, business leaders, community advocates and faith leaders to come together around these proposals demonstrates that broad support can exist for immigration reform and border security, and that people from very different perspectives can agree when we challenge our assumptions. The Border Task Force began to learn that much of our work centers on the question of what genuinely makes our communities safer and stronger. Thus, we believe that the report offers a new paradigm for immigration enforcement. By ensuring the safety of border communities, we shift away from an enforcement-only mentality to one that recognizes that smart immigration reforms benefit everyone in our communities and in our nation. The following summary of recommendations reflects that conclusion.

- **Communities are more secure when border enforcement policies focus on the criminal element and engage immigrants in fighting the real dangers facing us.** Community security is an integral part of national and border security, but we need to stop treating the immigrant as the greatest threat, focusing instead on dangerous criminals, traffickers, and exploiters in border and immigrant communities.
- **Communities are safer when we implement policies that ensure accountability and provide local oversight of enforcement activities.** Border enforcement policies, projects, and agencies need to be accountable to the communities in which they operate. To ensure that this occurs, the U.S. Congress needs to create an independent oversight and review commission. Additional operational and policy recommendations include improved human rights training of officers, strengthened complaint procedures, and measures to end racial profiling in the borderlands.
- **Communities flourish when Ports of Entry are treated as vital gateways to America.** Ports of Entry are America's gateway. They are vital to the economy and well-being of the nation and border region, and they deserve major investments in staffing and infrastructure to expedite crossings and reduce the economic impact of long border delays. Dramatic overhaul of complaint and oversight procedures is needed to ensure that the rights of border crossers are protected.

- **Communities are stronger and lives are saved when we replace border blockade operations with more sensible enforcement.** Comprehensive immigration reform will eliminate the need for mass border enforcement “operations” that are responsible for hundreds of deaths annually. Implementation of border enforcement actions, technologies, and infrastructure need to take into account impacted communities and the environment.
- **Communities are literally divided by the devastating impact of the border wall, the construction of which should be halted.** The construction of the border wall should immediately stop due to its overwhelming social, environmental, and legal impacts. Just from a cost-effectiveness standpoint, the current border wall and fencing projects have not proven successful in stopping immigration flows, while construction costs have nearly doubled from \$4.5 million per mile to \$7.5 million per mile.
- **Communities are safer when local law enforcement is not pressed into immigration-enforcement roles.** Federal immigration laws involve complicated administrative and criminal issues, and local law-enforcement agencies should not be forced to assume the role of federal immigration enforcement. Federal and state laws and resources should not be used to pressure local agencies to undertake these activities.
- **Communities are safer when the military is not used to enforce civilian law.** The military does not belong in civilian law enforcement, even indirectly. Demonstrated risks to civilians of military operations in support of civilian law enforcement should be eliminated. Loopholes in the Posse Comitatus Act governing the National Guard should be closed.
- **Communities are destabilized by harsh detention and removal practices. It is essential to dramatically overhaul detention practices and the manner in which we conduct removals.** We propose a series of specific reforms to improve the human rights conditions of the U.S. detention and deportation system, which currently has little oversight and accountability.
- **All communities benefit by engaging the root causes of migratory pressures. Comprehensive economic development is the long-term solution.** Just and comprehensive development in the U.S. borderlands, the U.S. interior, and the Mexican interior, is the long-term solution to migratory pressures.

Going Forward

Resolving the crisis along our southwestern border is a national imperative. The expertise of border leadership is critical to the development of border security measures. For too long, border communities have been told what will “work” to fix the problem, without being actively included in the decision-making process. At the onset of a new Administration and a new Congress, the time has come to engage in a genuine dialogue

about immigration and border reform. The timing could not be more critical—our economic crisis makes it imperative that we revisit old ideas about immigration as a barrier and instead view immigration and border issues as part of the solution. Effective border policy relies on:

- Security that focuses on criminal elements such as trafficking, smuggling and other insidious actions.
- Accountability and trust between law enforcement officials and the community.
- Fiscally responsible border enforcement measures that promote cross-border trade.

Ultimately, this Border Policy Report can provide us with the opportunity to begin to address the very complicated issues of immigration reform and border security in a new framework, one that recognizes that we must all work together to remain strong and grow.

Background and Context of the U.S.- Mexico Border Policy Report

"Border Communities as Part of the Solution"

U.S. communities along the border with Mexico experience a reality that is essentially different from that of the rest of the country. U.S. immigration policy has transformed the region into a militarized zone where the U.S. Constitution and international law are selectively applied. By failing to recognize and affirm fundamental civil and human rights, U.S. immigration policies and efforts to "secure" the southern border have had dire human consequences, from the ever-increasing tally of migrant deaths on the border to the systemic violation of the civil and human rights of border crossers and those living in border communities.

In the summer of 2005, the Border Network for Human Rights (BNHR) and the Border Action Network (BAN) launched an unprecedented consultation within border communities in Texas, New Mexico, and Arizona, placing border policies and practices at the center of the discussions. As a result of those community dialogues, it became clear that border communities critically questioned the content and form of U.S. border policies and the process by which they are shaped by Congress, the Administration, and Washington-based institutions, who essentially have left out the voices, opinions, and perceptions of border communities.

This border community consultation process highlighted the fact that effective and responsible border enforcement policies should comprehensively integrate national security, community security, economic development and respect for human and constitutional rights. Border residents believe that national security and the protections of rights are not mutually exclusive, but are both essential elements for building better immigration and border policies. By the spring of 2006, the BNHR and BAN, with the support of the Latin America Working Group, had translated the results of the community consultations into a series of nearly 40 policy recommendations. These recommendations, which dealt with issues such as border operations, fencing, military involvement at the border, law-enforcement misconduct, community security, and detention and deportation, became known as the *Guidelines for Alternative Border Enforcement Policies and Practices*.

Subsequently, in each of the border states the groups began to distribute the Guidelines to local elected officials, law enforcement, and faith, business, and other community leaders. These discussions revealed that nearly every sector of society within border communities shared similar frustration with border enforcement policies—i.e., that they undermined the essential interdependence between cross-border communities.

In the summer of 2006, the two groups brought together several individuals and institutions from Texas, New Mexico, and Arizona to create the U.S.-Mexico Border and Immigration Task Force. Members of the Task Force are local elected officials, members of community organizations, academics, lawyers, clergy, and business and community leaders of border cities and counties.

The primary role of this Task Force is to bring together the opinions, expertise, and insight of the various sectors of our border society to present policy recommendations and testimonies on the current immigration reform debate. Moreover, the Task Force attempts to present a new "border vision" that comprehensively integrates border security, human and civil rights, accountability, community security, and regional integration. In October 2006, the Task Force took its first step by endorsing and improving the Guidelines for Alternative Border Enforcement Policies and Practices.

In November 2006, the Task Force traveled to Washington, D.C. to present these policy recommendations to congressional offices and White House officials. During that trip, the Task Force was asked by key congressional offices to provide specific legislative language. A full document with policy ideas and legislative recommendations was developed by the Task Force and submitted to congressional offices in December 2006.

In June 2007, an important delegation of approximately 20 members of the Task Force, led by Co-chairs Jose Rodriguez (El Paso County, TX attorney) and Manny Ruiz (Santa Cruz County, AZ Supervisor), traveled again to Washington to reinforce the inclusion of their border policy guidelines in the immigration reform debate.

The Task Force members had a busy schedule. In just two days, and with the help of Congress Silvestre Reyes (El Paso, TX), the group met with Democratic Majority Leader Rep. Steny Hoyer, with the office of the Senate Majority Leader Harry Reid, with AZ Senator Kyl, with six U.S. Representatives personally (Reyes, Grijalva, Giffords, Rodriguez, Pearce, Gutierrez), with more than 10 other congressional offices, with key congressional committees and subcommittees (Judiciary, Homeland Security, Border Affairs, Immigration), with White House officials, with high-level DHS officials, with the Border Patrol Deputy Chief, with D.C.-based advocates, and with media representatives.

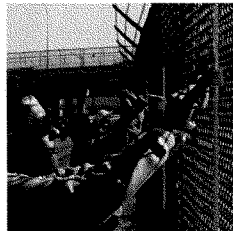
By mid-June the work of the U.S.-Mexico Border and Immigration Task Force had already had an impact. Several of its key recommendations made it into the final version of both the Senate compromise bill and the STRIVE Act in the House, including the creations of the U.S.-Mexico Border Review Commission, the Report on Border Deaths, the Border Patrol Training Review, Local Community Consultations, and the Office of Detention Oversight. This was a major achievement for the Border Task Force—none of those provisions would have been included in the two bills without its superb efforts and political assertiveness.

Unfortunately, the week following the Task Force trip to Washington, the Congress and the Bush Administration showed their inability to carry out a serious discussion on immigration reform. While Congress stalled on any comprehensive approach to immigration, the Administration forged ahead with the enforcement-only and enforcement-first legislation. Given this trajectory, the role of the Task Force today is as important as it was during the immigration reform debate. While Washington has lately been largely focused on presidential polling, the border continues to be a battleground among candidates and is still a focal point of national interest, with or without the promise of immigration policy reform. As such, the Task Force can continue to impact the border policy debate and urge the inclusion of the Guidelines in national policy.

At the same time, the Task Force and the Border Human Rights Collaborative (Border Network and Border Action) decided to utilize the political window of opportunity to expand the vision for national security, community security, human rights, accountability, and bi-national economic integration. The groups decided to convene a "Border Policy Conference"

to bring together all the members of the Task Force plus other key community leaders and sectors along the U.S.-Mexico border to elaborate the Guidelines and develop a forward-thinking vision of border communities and the types of policies that are relevant. On November 29 and 30, 2007, more than 200 individuals representing diverse organizations and institutions came from all along the U.S.-Mexico border to participate in the Border Conference. The agenda of the two-day Conference in El Paso, Texas included plenary presentations on border and immigration policy history, immigration and the global economy, and analysis of the current national immigration debate. Participants engaged in small-group conversations to enhance the Border Guidelines and to further develop a long-term vision of border policy. The Border Policy Conference was convened with the expectation of transforming the way people think about the border and the types of policies needed in the region. This report attempts to capture the discussion and consensus that emerged at the conference.

Impacts of Intensified Border Enforcement and Militarization on Border Communities



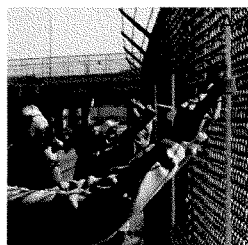
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Effects of Intensified Border Enforcement and Militarization on Border Communities¹

U.S. immigration and drug interdiction policies have transformed the region into a militarized zone where the U.S. Constitution and international law are selectively applied, at best. Efforts to "secure" the southern border have had dire human consequences, from the ever-increasing tally of migrant deaths to the systemic violation of the civil and human rights of border crossers and those living in border communities. Conditions are rife with the potential for increased violence against border residents and migrants alike.

Over six million people live in the counties located along the U.S. side of the border. Human rights violations occur against U.S. citizens, legal residents, legal visitors, and undocumented residents and migrants. In a 2007 report, the Border Network for Human Rights (BNHR) found that 40 percent of documented rights violations in the Texas and New Mexico border regions occurred against U.S. citizens or legal residents. Forty-seven percent of the violations were perpetrated against the undocumented, while the rest (13%) of the victims were of unknown status.² Border enforcement policies and practices are violating the rights of border residents and families whether they have legal status or not.



Avoidable Deaths

Border blockade operations such as Operation Blockade/Hold the Line, Operation Gatekeeper, and Operation Safeguard have forced migrants to cross dangerous and remote desert and mountain terrain, often during times when temperatures are very high or low. Border Patrol checkpoints have prompted the use of more dangerous smuggling approaches such as hiding in tractor-trailers, and smugglers have demonstrated little or no regard for the human beings that they are

¹ Where not otherwise footnoted, this section of the conference report is adapted from: Border Network for Human Rights, "Behind every abuse is a community: U.S.-Mexico border report to the United Nations Human Rights Committee regarding the United States' compliance with the International Covenant on Civil and Political Rights," El Paso, TX, June 2006. Downloaded from <http://www.bnhr.org/index.php?option=com_content&view=article&id=14:report-on-us-compliance-with-the-international-covenant-on-civil-and-political-rights&catid=1:status-of-human-rights&Itemid=7>

² Border Network for Human Rights, "A testimonial report: The status of human and civil rights at the border, 2007" El Paso, TX, December 10, 2007. Downloaded from <<http://www.bnhr.org/pdf/BnhrReport2007.pdf>>

transporting. Since the inception of blockade operations in 1994, more than 4,000 migrants have died crossing the U.S.-Mexico border, most often due to dehydration and exposure in the desert. Conservative estimates of annual death rates now approximate 400 per year.³

Smugglers

As the difficulties in crossing increase, migrants increasingly rely on human smugglers or "coyotes." According to one recent study, 90% of undocumented migrants now use coyotes, which charge more than \$1,600 per trip.⁴ This dynamic creates myriad concerns and problems, one of which is the significant financial cost to migrants—or, seen from the other side, the significant income that these illegal smugglers make from human trafficking. Furthermore, smugglers subject migrants to dangerous and even life-threatening conditions, which have resulted in crossing deaths and asphyxiation in the back of semi-tractor trailers. Smugglers have also been regularly accused of coercion, rape, and forced servitude to pay off debts. The United States has passed a series of laws to curb smuggling and reduce risk to migrants, such as the Trafficking Victims Protection Act of 2000, and these measures have to some extent offset the harsh border-control policies that lead desperate migrants to risk their lives.

Militarization

The U.S. border has been the site of a considerable expansion of the U.S. military's role in immigration enforcement, which should really be a domestic, civil matter. The expansion is evident in both the U.S. military's direct and indirect involvement in areas of civil law enforcement and law-enforcement agencies' adoption of military strategies and characteristics. Joint Task Force-Six (JTF-6, later renamed JTF-North), stationed at Ft. Bliss in El Paso, has a mandate to provide military personnel for observation, reconnaissance, intelligence analysis, and training along the border. In its first eight years of existence, it conducted more than 4,000 covert ground troop operations, eighty percent of these on the southern border, the majority at the request of the U.S. Border Patrol. In May 1997, the death of Ezequiel Hernandez, a U.S. citizen shot by four Marines carrying out a covert operation, led to military patrols on the border being suspended. But the door for continued direct military involvement on the border has not been closed, and JTF-North continues to operate along the border.

In May 2006, President Bush announced the deployment of over 6,000 National Guard troops to "assist" the U.S. Border Patrol along the border in California, Arizona, New Mexico, and

³Wayne A. Cornelius, "Death at the border: The efficacy and 'unintended' consequences of U.S. immigration control policy, 1993–2000." Downloaded from <<http://www.ccis-ucsd.org/PUBLICATIONS/wrkg27.pdf>>

⁴Jezmin Fuentes, Henry L'Esperance, Raúl Pérez, and Caitlin White, "Impacts of U.S. immigration policies on migration behavior," in Wayne A. Cornelius and Jessa M. Lewis, eds., *Impacts of border enforcement on Mexican migration: The view from sending communities*, La Jolla, CA: Center for Comparative Immigration Studies, University of California, San Diego, 2007.

Texas. Though state and federal officials claim that this is not a move toward the militarization of the border and that the armed agents will be used only in a "support" fashion, past experience gives cause for community concern. There are more than 12,000 Border Patrol agents along the U.S.-Mexico border, and some communities, such as Douglas, Arizona, are overwhelmed by their presence. With a population of 14,000, the town is host to almost 500 Border Patrol agents, or one agent for every 30 people in the town. The proposed increase in U.S. Border Patrol agents and the deployment of 6,000 National Guard troops have filled the more marginalized immigrant communities along the border with extreme apprehension, if not terror.

The presence of military patrols puts border residents at risk. Soldiers are trained for combat, not to assess immigration violations or to monitor compliance with human rights norms, and particularly not in unique border regions. Persons living within the boundaries of the U.S. should not be subjected to military-style stops, checkpoints, and other violations of their civil liberties.

Vigilantes

The militarization of the U.S.-Mexico border has also given rise to a number of civilian militia groups whom immigrant communities refer to as "migrant hunters." These groups, such as the Minutemen and the American Patrol, along with armed ranchers, have harassed immigrants crossing through the desert. The American Civil Liberties Union found a disturbing number of incidents regarding vigilante activity on the U.S.-Mexico border in which migrants reported being "shot at, bitten by dogs, hit with flashlights, kicked, taunted, and unlawfully imprisoned."⁵

In a 2005 petition to the Organization of American States' Inter-American Commission on Human Rights, Border Action Network documented nearly 1,000 people who had been subject to civilian vigilante detention, harassment, and violence.⁶ These activities are not officially sanctioned, but they are encouraged by the climate of fear and by militarization of the border. At the very least, it is important that federal officials maintain absolute separation from vigilante groups, and that local and state law enforcement do so as well, so that they are free to investigate and intervene in cases of abuse and unlawful detention.

Federal Law-Enforcement Abuses

In a very small but extremely important set of cases, Homeland Security officers (including Border Patrol officers) have used lethal force.⁷ The wider pattern of abuses includes pointing guns at immigrants, wrongful detention, excessive use of force, and verbal and psychological

⁵American Civil Liberties Union, "Creating the Minutemen: A small extremist group's campaign fueled by misinformation," at p. 13. Downloaded from <<http://www.ilw.com/articles/2006,0619-ybarra.pdf>>

⁶Border Action Network, "Petition to the Inter-American Commission on Human Rights. Submitted by the Border Action Network in relation to Victims of Anti-Immigrant Activities and Vigilante Violence in Southern Arizona Against the United States of America. Petition No. P-478-05 (United States)."

abuse. A specific subset of abuse is coerced voluntary departures and other violations of due process by denying the person's right to appear before an immigration judge.

Border Patrol and Immigration and Customs Enforcement (ICE) Operations in Border Communities

Department of Homeland Security officers intermittently enforce immigration law in settings that disrupt and spread fear in everyday community settings. At various times in the last two decades, and continuing sporadically to the present day, these include (1) warrantless entry into homes by manipulation or coercive action; (2) immigration sweeps on public transportation in the poor neighborhoods known to have high numbers of immigrants; (3) unfocused "area control" operations in residential neighborhoods, streets, and parks, and near places of employment; and (4) actions on or near school grounds or against children traveling to school.

In the border communities of Pirtleville, Naco, Nogales, and Douglas, AZ, 19%, 27%, 32%, and 43% of residents, respectively, reported having been stopped, questioned, or harassed by the Border Patrol. The Border Action Network stated in a recent report: "From conversations with more than three hundred families, we found that many of the fundamental values that typically hold families together, like trust, safety, and accountability, have been devastatingly eroded. This report reveals that border communities feel less safe, that the Border Patrol has broken communities' trust, that residents are made to feel suspect simply because of their appearance, and that the agency has no system of 'checks and balances'." ⁸

Racial Profiling

Recent reports have shown that racial profiling, particularly with regard to immigration status in the U.S., is an all-too-frequent experience. A recent study by the Pew Hispanic Center revealed that nearly one out of ten Hispanic adults—native border U.S. citizens and immigrants alike—reported that in the past year the police or other authorities have stopped them and asked them about their immigration status.⁹

Here on the southern border, with nearly 18,000 Border Patrol agents and myriad other federal agencies, racial profiling continues to threaten border and immigrant communities. Standard license checkpoints that often result in the questioning of drivers about their

⁷For example, see the cases discussed on pp. 9–10 of Border Network for Human Rights, "Behind every abuse is a community: U.S.-Mexico Border report to the United Nations Human Rights Committee regarding the United States' compliance with the International Covenant on Civil and Political Rights" (see Fn. 1).

⁸Border Action Network, "The unequal impacts of border patrol activities in arizona border communities," Tucson, AZ 2003. Quote at p. 1. Downloaded from <http://www.borderaction.org/PDFs/justice_on_the_line.pdf>

⁹2008 National Survey of Latinos, September 18, 2008. Produced by the Pew Hispanic Center.

immigration status, occur throughout the border region but with greatest frequency in poor immigrant communities. The "transportation checks" in which Border Patrol agents conduct public transportation sweeps also occur more frequently in communities with high numbers of Latino immigrants. These are often impoverished areas where individuals are more likely to use public transportation. In a survey conducted with over 300 families in Arizona border communities, the Border Action Network found that a startling majority of residents (41% in Pirtleville, 66% in Naco, 70% in Nogales, and 77% in Douglas) felt that Border Patrol Agents stopped people for simply having brown skin.

Immigration Enforcement Expansion vs. Internal Complaint and Training Process

The Border Patrol has dramatically expanded from around 4,000 officers in 1994 to over 9,000 officers in 2000 and over 15,000 officers in 2008. The Patrol is authorized to expand to at least 21,000 officers by 2010. This expansion has had little or no effect on the entry of undocumented migrants into the United States, and the resident undocumented U.S. population has more than tripled during this time (1994–2008). To cope with this expansion, Border Patrol training has been shortened from 19 weeks to 17 weeks.

In this period of rapid expansion, there are also serious concerns about the quality of new recruits and the removal of poorly performing recruits, given the intense political pressure to increase the workforce dramatically. In response to an April 2008 Fox Network News report questioning Border Patrol recruitment and hiring criteria, the Border Patrol confirmed that recruits do not need to be high school graduates or have passed the GED test to be hired. A qualifying score on the entrance exam need only be a 70%.¹⁰

The U.S. Government Accountability Office found that "in certain southwest border sectors the average experience level is only about 18 months. Moreover, the supervisor-to-agent ratio is higher than the agency would like in some southwest sectors. Border Patrol officials told us that a 5-to-1 agent-to-supervisor ratio is desirable to ensure proper supervision of new agents, but our analysis of Border Patrol data showed that as of October 2006, the overall agent-to-supervisor ratios for southwest sectors, where the Border Patrol assigns all new agents, ranged from about 7 to 1 up to 11 to 1."¹¹

The DHS internal complaint process has serious flaws in being accessible, transparent, and adequately staffed to investigate complaints regarding possible civil and human rights violations. Many hesitate to lodge complaints against the law-enforcement agencies because of fear of retaliation. Officers themselves are also poorly informed. A study conducted by the BNHR found that many immigration officers (30–70% of those interviewed) were uninformed about the complaint process.¹² There is also a need for review and evaluation of supervisors to hold them responsible for repeated violations by staffers.

¹⁰ OBP Response to Fox News Report. April 10, 2008.

http://www.cbp.gov/xp/cgov/border_security/border_patrol/border_patrol_ohs/archives/fox_report.xml

¹¹ GAO letter to Con. Mike Rogers, March 30, 2007, "Homeland security: Information on training new Border Patrol agents," available at <http://www.gao.gov/new.items/d07540r.pdf>

Ports-of-Entry

The U.S.-Mexico border provides a trade and transportation corridor for the United States' second-largest trading partner, Mexico. On any given day, about 132,000 persons, 250,000 vehicles, 523,000 vehicle passengers, 12,000 commercial trucks, and 2,000 rail containers cross from Mexico into the United States. Changes in security measures in the wake of September 11th have led to increased waiting times at border crossings. In effect, long wait times have become a non-trade barrier to entry that is primarily absorbed by border residents. The inconvenience of uncertain and longer wait times has economic repercussions on cross-border employment and sales activity in industries that directly benefit from the flow of international trade and people—from manufacturing to logistics to professional services to wholesale and retail trade.¹³ By one estimate, the city of Douglas, AZ derives nearly 70% of its sales tax revenue from people crossing the Douglas-Agua Prieta border and making purchases in Douglas. On a national scale, trade through the southwest border accounted for 10.1 percent of total U.S. trade in 2004, up from 7.4 percent in 1994.¹⁴

Longer wait times on cargo also pose challenges for the just-in-time supply chain that North American manufacturers depend on. As a result, increased transaction costs are ultimately passed on to the consumer because of changes in transportation modes, greater inventory costs, or other delays in transportation, communication, or distribution.¹⁵

In a series of studies conducted by the Texas Transportation Institute, southwest border communities are recognized as having potentially serious mobility limitations. In the "2005 Urban Mobility Report," the research indicates that San Diego is 12th nationwide in annual hours of delays by travelers, at 52 hours per year, exceeding the national average for 85 urban areas by 5 hours. El Paso ranks 54th, with Laredo and Brownsville at 79th and 85th, respectively. These delays equate to 81,756,000 hours of time, resulting in 59,000,000 gallons of fuel consumed and a combined congestion cost calculated at \$1.4 billion per year.¹⁶

¹² Border Network for Human Rights, "Behind every abuse is a community: U.S.-Mexico border report to the United Nations Human Rights Committee regarding the United States' compliance with the International Covenant on Civil and Political Rights," op. cit., at p. 19.

¹³ "At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

¹⁴ Texas Center for Border Economic and Enterprise Development, Texas A and M International, derived from U.S. Census.

¹⁵ "At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

¹⁶ "The 2005 urban mobility report," Texas Transportation Institute, Texas A and M University, College Station, TX, May 2005. Congestion cost is the value of the time of the person traveling (\$123.45 per hour) plus excess fuel consumed at state average costs.

Tens of millions of people cross the U.S.-Mexico border every year. In 2004, for example, 48,084,235 pedestrians and 91,341,838 non-commercial vehicles crossed the border.¹⁷ In spite of efforts by the U.S. Customs and Border Protection to improve its agents' conduct and professionalism,¹⁸ complaints continue to be received by community organizations like the Border Network and Border Action, which document reports reflecting inconsistent and unclear application of identification requirements and incidents of gross misconduct.

In one case of wrongful detention, a woman and her two sons were returning to El Paso after spending time in Ciudad Juarez. The woman was stopped by an agent at the Port of Entry and taken to an office where she was asked to take off her clothing for an inspection. Though the woman asked for a reason and stated that she did not want to do it, eventually after a few more orders from the agents, she removed her clothing and was subjected to a body cavity search. Finding nothing, they simply said that she fit the description of a drug runner and told her to leave.

U.S. Customs and Border Protection recently announced the December 2008 release of an online complaint intake system,¹⁹ but with border residents reportedly losing trust in the agency's ability to investigate itself, and with the limited Internet access of this population, this new system is not expected to remedy the need for greater oversight, consistency, and a complaint system with integrity.

Local Law Enforcement and Federal Immigration Law

Throughout the country there is a dominating myth that links undocumented immigrants with high crime rates. If this myth were indeed statistically accurate, the border region, as the convergence point for the highest rate of immigration into the United States, would be expected to have high crime rates. However, much like the rest of the country, the border region has experienced a consistent decrease in crime rates from 1990 to the present. Furthermore, state-level data indicate that southwest border counties consistently have lower violent and property crime rates than the non-border counties in their respective states.²⁰

Local law enforcement in the region does face unique challenges due to their proximity to the international border. Data show that border counties' total arrest rates are 16% higher than the national rate per 100,000. Yet, those arrests are mostly due to local enforcement of

¹⁷"Border trade statistics, U.S. Customs.

¹⁸"U.S. Customs and Border Protection vows a total commitment to professionalism," August 26, 2004. Press release issued by U.S. Customs and Border Protection.

¹⁹"CBP plans online complaint management system," October 5th, 2008. GSN: Government Security News.

²⁰"At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

federal offenses. For example, drug possession arrest rates are 83% higher than the national rates and at a level that would result in a 1st-place ranking as a 51st state in arrests for federal offenses.²¹

The uniqueness and importance of local law enforcement in the border region should warrant adequate funding for local agencies. However, the number of full-time equivalent officers per 100,000 residents for agencies in border counties is 62% of the national average. In all but New Mexico, border county law-enforcement agencies average less than 90% of what the non-border agencies in that state receive.²²

In spite of the need for local law enforcement to be sufficiently staffed and adequately provided with resources to uphold the public safety in border communities, local agencies are being pressured by federal and state grants and by changes in federal law to assume the responsibility of enforcing federal immigration law. The issue is widespread, but it has had the most impact on sheriff's departments, which enforce laws in unincorporated and some small incorporated communities in the borderlands, many of which are poor, heavily Latino, and significantly immigrant.

Since 2005, the BNHR has received reports that the El Paso County Sheriff's Department has been conducting immigration raids in community stores and homes and at immigration checkpoints outside schools and in the streets. Those detained for minor traffic violations are asked for proof of immigration status. Some reports indicate that deputies have not only called immigration officials but have also personally driven victims to detention centers or to Ports of Entry to expedite their return to Mexico. Other community members report having been stopped by sheriff's deputies without cause while they are driving or walking. These community members feel that they were stopped due to their physical appearance.

A particularly egregious set of cases occurred in Chaparral, NM, where Otero County Sheriff's Deputies used pretexts (such as yard or canine violations) or coercive or manipulative, warrantless searches of homes to identify and turn over possible undocumented immigrants, resulting in (among other abuses) the separation of a number of children from their parents.²³ A clear example of the impact of local enforcement of immigration laws is that 32 cases out of a total of 55 human rights cases in 2007 reported by border residents to the BNHR involved local deputies and police officers asking for immigration status during a routine traffic violation or other interaction, representing 58% of the total reported cases.²⁴

²¹Source: http://www.fbi.gov/ucr/cius_02/html/web/offreported/02-table05.html. Note: Crime index of offenses reported is rounded to nearest whole number.

²²"At the crossroads: U.S.-Mexico border counties in transition." March 2006 report prepared for the U.S.-Mexico Border Counties Coalition by the Institute for Policy and Economic Development, University of Texas at El Paso.

²³Border Network for Human Rights, "A testimonial report: The status of human and civil rights at the border, 2007" El Paso, TX, December 10, 2007, op. cit. Discussed at pp. 10-15.

²⁴Ibid., at p. 5.

In addition to the egregious violations of residents' civil and human rights, sheriff's departments' enforcement of immigration law has also taken a toll on agency budgets and effectiveness. Since the Maricopa County Sheriff's Department, in the state of Arizona, entered into an agreement in January 2007 with Immigration and Customs Enforcement, the county's arrest rate for serious crimes—including robberies, aggravated assaults, and sex crimes—has decreased dramatically. These crimes received little to no investigation. In 2005, Maricopa Sheriff Arpaio's office cleared 10.5 percent of its investigations. When immigration enforcement operations began, that number dropped to 6 percent. Within the first three months of the partnership, the Sheriff incurred a \$1.3 million deficit, largely due to thousands of extra hours paid to officers.²⁵

Border Walls

The border wall or fence has been a very controversial issue here in the border. After DHS Secretary Chertoff waived more than 30 environmental laws, the border communities felt disengaged from any kind of decision making. Elected officials, community members, and faith and community organizations continue to disapprove of the border wall, and many have called it another "Berlin Wall" for what it symbolizes. It will tear through communities, farms, and natural areas, as it has already, resulting in many landowners fighting and suing for their land. As a consequence, government is leaving huge gaps, avoiding building the wall on wealthy residents' properties, while other homes and even universities are being jeopardized.

Not only will the wall put a burden on our communities but the cost of its construction will haunt the taxpayers' pockets for many years to come. When it first came to light, the plans called for spending at least \$4.5 million per mile. Now we are seeing that the cost will be close to \$60 billion for construction and maintenance of the wall.

²⁵“What happens when local cops become immigration agents? Arizona sheriff's immigration-enforcement activities impact budget, arrest rate and response times.” Immigration Policy Center.

Guidelines and Recommendations for Alternative Border Enforcement Policies and Practices

Developed by Border Network for Human Rights, Border Action Network, and the
U.S.-Mexico Border and Immigration Task Force

These guidelines bring the perspectives and rights of U.S. southern border communities to the national discussion of comprehensive immigration reform. The proposals support comprehensive reform, but they would also add something important to the discussion. They advocate for justice for all of the inhabitants of the borderlands, a region that is heavily impacted by immigration policy decisions but that is often ignored in national and state discussions. The goal of these guidelines, then, is to move the United States in the direction of a coherent enforcement policy consistent with comprehensive immigration reform—a new approach that will point border-region enforcement toward the fundamental goal of enhancing the public safety and security of border and interior communities while upholding constitutional and human rights. The recommendations reject ineffective, wasteful, and harmful enforcement policies that fail to achieve their stated goals and that undermine the security of communities and the nation. We propose an enforcement approach that strives to achieve the best in the American tradition of “life, liberty, and the pursuit of happiness.”

I. ACCOUNTABILITY AND OVERSIGHT FOR BORDER AND IMMIGRATION ENFORCEMENT

In considering recommendations to prevent civil and human rights violations along the border, it is critical to keep in mind that all people along the U.S.-Mexico border, regardless of their ethnicity or legal status, should have their basic rights respected. Policies that criminalize migrants can lead to human rights abuses if law-enforcement officers and agencies are not held accountable to the communities in which they operate. Accountability and oversight should be viewed as assets rather than limitations on effective law enforcement and public security because they allow law enforcement agencies to focus their attention and resources on their broad missions. A relationship of mutual trust between communities and police organizations results in cooperation, sharing of information, and many other processes that meaningfully enhance community and national security.

Recommendations:

1. Create a United States Border Enforcement and Immigration Review Commission (the “Commission”). The Commission should be an independent agency legislatively established to oversee the implementation of all federal border and immigration policies, projects, programs, and activities, both those of DHS—Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Citizenship and Immigration Services (USCIS)—and those of other relevant agencies. It should be vested with legal authority to provide recommendations regarding federal immigration and security policy,

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enforcement, and complaint procedures, and it should also be able to hold federal immigration agencies accountable. Its broad purposes should be to promote best practices at the border, to enhance internal capacities in border agencies, and to strengthen relations between the community and government agencies.

The Commission should be composed of a diverse group of people who understand the complexities of the border, and most of them should be border residents.

It must have three powers: (1) investigatory power, (2) auditing power, and (3) legal power, including the power to subpoena.

The independent commission also needs to be able to formulate and fund an effective outreach strategy to border communities. The Commission should report annually to Congress.

2. Require human rights certification of local and federal agents. Department of Homeland Security officers, police officers, and other law-enforcement officers working in the border region should receive training in ethics, civil rights, human rights, and community relations.

3. Improve oversight of the complaint process. The complaint process of CBP and ICE should be reviewed by the Independent Commission to ensure that the mandate, resources, and staffing to investigate and resolve claims and to respond to public inquiries regarding the status of complaints is fulfilled.

Essential characteristics of an effective Complaint Process include:

1. Develop a uniform complaint procedure for all Border Patrol stations, from San Diego to Brownsville
2. If a person complains, she or he should not be penalized (similar to the protections provided to a plaintiff in a "whistle-blower" case, who cannot be terminated for bringing up an issue). To make this process effective, complainants should be protected from arrest and deportation proceedings for immigration violations, whether directly or indirectly detected due to the filing of the complaint.
3. Create a standardized database of complaints on a national basis.

4. Prohibit the use of racial profiling by border enforcement agencies. Internal operations of the Border Patrol and ICE must be regulated in order to prevent the profiling of entire communities. The Border Patrol ought to provide a report showing the race of persons stopped, similar to the report that police officers must provide in El Paso, Texas.

5. Develop a community education program. The program would teach members of border communities about civil and human rights and how to utilize border enforcement agency complaint processes. The program will facilitate reporting on human rights violations and preventing abuses. It will develop a curriculum and learning system for border

communities. It will also distribute materials on vindicating rights and on the DHS complaint processes. The education program must be coupled with improvements in the internal complaint and review process of the Department of Homeland Security.

6. Encourage the formation of local citizens' review committees. The committees will monitor the activities and complaint review processes of the border enforcement agents and agencies.

7. Require and carry out an independent impact study of border policies, practices, and enforcement agencies. The *United States Border Enforcement and Immigration Review Commission* should conduct an independent study that looks at whether border policies and agencies are doing what they were designed to do. Such a study would consider (1) the degree to which government officials have been engaged in illegal activity or malfeasance; (2) the net costs and benefits of border policies, practices, and enforcement agencies; and (3) other critical policy-assessment questions.

II. REVIEWS OF BORDER OPERATIONS, TECHNOLOGY, AND INFRASTRUCTURE

Border-control operations, technologies, and infrastructure are designed to prevent unlawful immigration, transnational criminal activity, and national security threats. Yet, each of these phenomena has distinct causes and characteristics and demands distinct responses. Current border operations, however, cast the net so widely that strategies to deter immigration, which is an administrative issue, are resulting in the needless and horrific deaths of men, women, and children. As noted in several reports (i.e., Center for Immigration Studies at the University of Houston, the Government Accountability Office), border operations such as "Hold the Line," "Gatekeeper," and "Safeguard" result in people crossing the border in dangerous and isolated regions where the chances of dying of hypothermia, exposure, and heat exhaustion increase dramatically.

In addition to putting thousands of migrants at risk each day, these operations have failed to stop undocumented immigrants from entering the country, have led to increased and professionalized smuggling operations, have contributed to the rising tension and violence on the border, and have fostered civil and human rights violations. As a fundamental principle, public policies that address civilian social issues should not kill people. Comprehensive immigration reform, as well as specific regulation of border operations, technology, and infrastructure, is needed to reverse this unacceptable state of affairs.

Recommendations:

1. U.S. policies should not contribute to hundreds of deaths annually. As a matter of basic principle, the United States should establish a guiding principle that no policy should contribute to the deaths of men, women, or children.

2. Pass comprehensive immigration reform legislation. To remove the pressure on the U.S.-Mexico border, Congress should pass comprehensive immigration reform legislation that provides for the orderly, legal entry of migrants and a path to permanent residency for undocumented immigrants already in the United States. With adequate and effective mechanisms of legal migration, danger-creating border-control "operations" become unnecessary.

3. Replace operations such as "Safeguard" and "Hold the Line" with border community safety and security operations. Strategies should be developed and pursued that uphold the human and civil rights of migrants, that are accountable to border communities, that can distinguish between criminal activity and immigration violations, and that integrate technologies that respect the environmental, economic, and social quality of life on the border. These strategies should be incorporated into a comprehensive plan to reform immigration policy.

Community Safety and Security Operations would focus on dangerous criminals and traffickers in border and immigrant communities, as opposed to citizens, legal residents, and otherwise law-abiding people without legal status. Community security would strengthen the rights and liberties of all members of a community.

4. Require careful cost/benefit and effectiveness analyses of all current and proposed border operations, the border wall, technologies, and strategies before adding to them or creating new initiatives. The DHS should use its significant budget to strengthen (1) projects to reduce migratory "sending pressures" in Mexico and Central America, and (2) border community safety and security operations. DHS should officially renounce its planning of "Endgame" removal and deportation strategies.

5. Protect the border environment and quality of life. Border enforcement operations, technology, and infrastructure should be guided by criteria that actively minimize their impacts on border residents. Concerns over the quality of life and noise, air, and light pollution; over endangered species and habitats; and over the preservation of the environment should be included in all considerations of existing and expanded border operations. For example, 24-hour stadium-style lighting significantly diminishes the quality of life of border residents.

6. Develop non-lethal response techniques and practices. Guidelines and training should ensure that the responses of border agents are commensurate with the level of threat they face. The Border Patrol must implement clear and strict training and guidelines on the application of force, minimizing the use of lethal force and making it clear that even the type and level of non-lethal force should be commensurate with the type of law involved and the characteristics of the enforcement situation.

7. Prosecute border vigilante groups. The Department of Justice should conduct a study that analyzes all reported incidents of border vigilante detentions of migrants and that assesses how law enforcement agencies have responded to allegations and incidents of rights

violations. A special investigator should be appointed to conduct independent investigations into any possible civil rights and human rights violations by civilian border watch groups against undocumented immigrants or border residents. The investigator should explore whether there has been formal or informal cooperation between such groups and the Border Patrol and other federal law enforcement agencies. The resulting report should offer guidelines that preclude government cooperation with vigilante groups. Local and federal law enforcement agencies would be expected to adopt and adhere to the report's recommendations.

III. PORTS OF ENTRY

When the Department of Homeland Security took over the administration and enforcement at the nation's land ports, border crossers noted a dramatic increase in waiting times and an incremental increase in abuse-of-authority complaints against Customs and Border Protection (CBP) agents. U.S. Citizens have complained that CBP officials target U.S. citizens and others of Latino descent entering through the ports of entry. The complaints allege verbal abuse, physical abuse, sexual harassment, arbitrary detentions, destruction of documents, and denial of entry.

According to a June 2005 study developed by the San Diego Association of Governments, over sixty million crossings are made annually in both directions via the three Ports of Entry located in San Diego County, with the average border crossing taking 45 minutes. The economic impact that long border delays have on the Tijuana/San Diego border area alone is astonishing: "over 3 million potential working hours in San Diego County are spent in delays at the border, averaging about 45 minutes per work trip, which may result in \$42 million in wages lost. The overall impact at the State level, given that 5% of the trips are headed outside the San Diego region, is over \$1.32 billion in addition to the \$44.3 million in income loss for work trips." The San Diego example can likely be extended to describe all Ports of Entry spanning the border.

A 2008 study in the *Journal of Homeland Security and Emergency Management* concludes that current practices at Ports of Entry are inconsistent and thus possibly undermine the public security and law enforcement goals of port inspections. Furthermore, a significant number of crossers perceive treatment at Ports of Entry to be arbitrary and unfair. Port management issues demand significant reform.

Recommendations:

1. Expedite border crossing at Ports of Entry. DHS must invest in improving infrastructure at the Ports of Entry in order to expedite border crossings. Programs such as SENTRI lanes and carpool lanes must be increased. Ports of Entry should also provide access to basic human services (restrooms, water, shade, etc.).

2. Clarify and publicize the documents necessary to enter the U.S. Border residents report being denied entry to the U.S. and receiving inconsistent information from CBP agents

regarding the documents needed to enter the United States. CBP must respect current policies regarding the documents that various legal categories of border crossers must present when entering the U.S., and they must be consistent in their application of the regulations and publicize their policies.

3. Promote an accessible and transparent CBP complaint process. CBP should post at Primary and Secondary Inspection booths their mission statement, their regulations regarding required documents to enter the U.S., and information about submitting a complaint.

4. Improve staffing levels and training for port personnel. Ports of Entry are understaffed, and DHS staff is overworked. Congress should appropriate sufficient funding for their operation. In addition, DHS should ensure that all port personnel are trained in legal and human rights aspects of inspections procedures, including questioning, searches, and handling of documents. It should also develop and implement training procedures and job evaluations that emphasize evidence-based inspections rather than impermissible profiling. Its training procedures and job evaluations should emphasize respectful and effective interpersonal interaction and should be consistently applied to all personnel at all ports.

5. CBP should recognize traditional, rural crossing points. CBP should adopt policies and procedures that reflect the class of the port and that allow for the exercise of discretion at traditional, rural crossing points.

6. EPA must conduct and environmental assessments at ports of entry. The government should conduct environmental assessments that determine the impacts of waiting traffic on air pollution and other potential environmental threats. The assessment should include recommendations on infrastructure, staffing, and inspections policies that could mitigate negative impacts.

7. The zero-tolerance policy for SENTRI card removal should be waived for minor violations.

IV. BORDER WALLS AND FENCING

The walls that have been erected along the U.S.-Mexico border, most of them near urban corridors, are unlike any others on earth. The two nations that share this border region are not at war with each other. In fact, Mexico and the U.S. enjoy an unprecedented economic partnership despite the two nations' turbulent relationship. Yet, the U.S.-Mexico border region is the most militarized international border between two countries that are not engaged in violent conflict. History has proven that walls are not a solution to economic disparities or other challenges between nations, and the U.S.-Mexico border is no exception. The Secure Border Initiative has produced (1) impunity in law enforcement on the part of DHS in the surveying and placement of physical and virtual walls, ignoring the voices and rights of border communities; and (2) failed projects at enormous costs, as documented in 2008 by the Government Accountability Office.

Recommendations:

1. Discontinue current and future wall and fence projects. Fencing projects have not proven successful in stopping immigration flows, while costs have nearly doubled from \$4.5 million per mile to \$7.5 million per mile. Current fencing and wall projects should be cancelled.

2. Analyze impacts of existing border walls. The current fencing projects must be analyzed by an independent governmental entity in order to assess their effectiveness and their impacts on the environment, on the lives of border residents, and on trade and cultural ties with Mexico.

3. Conduct a border community consultation and respect environmental protections and indigenous rights. Any new fencing projects must respect the environment and the rights of indigenous peoples, and they must not be undertaken without a legitimate consultative process with border communities. DHS must engage in meaningful consultation with border landowners and communities over the location and operations of the border wall and the "virtual" wall (SBInet).

4. Review the impacts of any future border wall projects. The Independent Commission should review future decisions made by DHS regarding the construction of fencing projects. The commission should review their cost-effectiveness, environmental impact, and impact on border communities. It must also ensure that fencing projects do not infringe upon the human rights of undocumented workers. The Secure Border Initiative needs to be held accountable for project failures and cost overruns. (See "Operations" item 3 for related recommendations.)

5. Review border wall exemptions from environmental protection laws. The REAL ID Act exempted border wall construction and other border projects from compliance with environmental protection laws. The constitutionality of these exemptions should be revisited.

V. DILUTING LAW ENFORCEMENT RESOURCES

As the chiefs of major city police departments have explicitly stated, it is a mistake to use state and local law enforcement to enforce immigration laws, directly or indirectly. This practice closes channels of communication between police and communities, makes immigrants reluctant to call police in crime situations (such as domestic violence), and damages the demonstrably effective public safety strategy of "community policing." Officers are not trained to enforce immigration law. Furthermore, this practice is a costly strain on limited police department resources and one that detracts from their ability to carry out their core functions. Finally, it is also bad public policy. The education, health care, and business professions have all condemned the insecurity and ineffectiveness of the blurring of immigration and criminal enforcement at a community level.

Recommendations:

1. The U.S. Congress must take serious steps to reaffirm that immigration is properly a civil matter, not a criminal issue. Historically, immigration has been considered and treated as a matter of civil law and an administrative issue. However, in recent years the trend has shifted toward treating immigration and immigrants as a criminal issue.

2. Local law enforcement agencies should not be asked to participate in federal immigration enforcement. Many law-enforcement officials argue forcefully against involving local police in immigration enforcement because it undermines community relationships and makes it harder to carry out law-enforcement activities that safeguard communities. *Section 287(g) of the Immigration and Nationality Act (INA)—which authorizes local law enforcement in some cases to enforce federal immigration laws—should be repealed.*

3. Federal and state resources should not be used to pressure local agencies to enforce immigration laws. Federal and state legislation should not pressure local law enforcement to assume the responsibilities of immigration enforcement. Many jurisdictions across the country have passed ordinances limiting police involvement in immigration affairs, and these ordinances should be respected and encouraged. In addition, federal and state grant money should not be linked to the enforcement of immigration laws.

4. Focus on public safety. Law-enforcement resources should concentrate on high-priority public-safety issues. Local enforcement of immigration laws diverts police attention from more pressing public-safety concerns.

5. Establish clear guidelines and procedures to guide criminal investigations. Federal, state, and local officials should establish and publicize clear guidelines—consistent with constitutional and human rights norms—that clarify how long a police or immigration law official can detain a person, the timing and form of notification required regarding the basis of detention, and the circumstances in which the immigration status of those detained can be investigated.

VI. MILITARY AT THE BORDER

In May of 2006, President Bush announced the deployment of over 6,000 National Guard troops to “assist” the U.S. Border Patrol along the border in California, Arizona, New Mexico, and Texas. Though state and federal officials have argued that this is not a move toward the militarization of the border and that the armed agents will be used only in a “support” fashion, past experience provides cause for community concern, particularly given the large number of Border Patrol agents who are already stationed along the U.S.-Mexico border.

Border communities such as Douglas, AZ are overwhelmed with the Border Patrol’s large presence. With a population of only 14,000, Douglas is nonetheless host to almost 500 Border Patrol agents, or one agent for every 30 people in the town. The proposed increase in U.S. Border Patrol agents and the deployment of 6,000 National Guard troops have filled the more

marginalized immigrant communities along the border with terror. With over 6 million people living on the U.S. side of the Mexico border, putting military patrols in their communities would place many people at risk. These soldiers are trained to kill, and are not properly trained in civilian affairs, particularly those related to the unique border region. Families and individuals living within the boundaries of the U.S. should not be subjected to military-style stops, checkpoints, or other violations of their civil liberties.

Recommendations:

1. Reaffirm and strengthen the Posse Comitatus Act. Approved during the Civil War reconstruction era, the Posse Comitatus Act prohibits the use of military forces on domestic soil. This act should be reaffirmed and strengthened, including cases in which the military, under the pretext of fighting the war on drugs and enforcing immigration, has been functioning in close coordination with civilian law enforcement along the border. Additionally, Posse Comitatus should apply to the National Guard if it is involved, directly or indirectly, in enforcing or supporting the enforcement of federal laws at the border and elsewhere. National Guard forces should not be exempt from Posse Comitatus, whether or not they are summoned for duty by state governors or the federal government.

Recent amendments to the federal Insurrection Act, which sets forth exceptions under the Posse Comitatus Act, stipulate that the President can summon the military for domestic intervention in order "to restore public order and enforce the laws of the United States when, as a result of a natural disaster, epidemic, or other serious public health emergency, terrorist attack or incident, or other condition ... where the President determines that ... domestic violence has occurred to such an extent that the constituted authorities of the State or possession are incapable of maintaining public order; suppress, in a State, any insurrection, domestic violence, unlawful combination, or conspiracy...." The Administration, Congress, and the courts should clarify that this "public order" exception does not cover and should not be invoked for normal border law-enforcement activities (immigration, narcotics), as it might be for an "emergency" equivalent to a natural disaster or major public disorder.

2. Prevent the misuse of military resources. The U.S. military and National Guard have specific duties and limited resources. These duties do not include enforcement of immigration law. Immigration and its enforcement on the southern border should not involve military troops.

3. Require that only trained immigration and customs agents take part in border enforcement efforts. Only agents who have been thoroughly trained in immigration law, ethics, and civil and human rights should enforce U.S. immigration and customs laws.

4. DOJ must conduct a review of border military operations. Review the constitutionality of direct military operations at the U.S.-Mexico border, including, in particular, the purpose, role, and activities of the Joint Task Force North and other military operations.

5. Immediately withdraw U.S. military and National Guard personnel from all armed operations in support of civilian law enforcement within 25 miles of the

border. The U.S. military and National Guard should be withdrawn from all border enforcement activities, including listening post and observation post operations and other reconnaissance and front-line operations. In general, the U.S. military should withdraw promptly from all operations and settings that place military and Guard personnel at risk of violating human rights or that might cause civilian injuries or deaths inadvertently.

VII. DETENTION AND DEPORTATION

Current detention and deportation laws and procedures are unduly harsh and counterproductive. Immigrants arrested for relatively minor criminal and/or immigration violations are often detained indefinitely under mandatory detention policies that fail to protect the public and increase taxpayer costs. The housing and care of approximately 31,000 immigrants each day has become a business for private corporations and a source of federal income for other private facilities, most notably county jails. Immigrants are now being held in over 350 sites across the U.S. Seemingly arbitrary movement from one facility to another without explanation occurs frequently throughout the system.

Delays and prolonged detentions are the result of harsh, rigid, unrealistic, and narrow categorizations of immigrants. These do not reflect who truly represents a threat to the broader community or who should be entitled to relief from removal. After an arrest, it often takes two to three weeks for an individual to be taken before an immigration judge and apprised of the charges against him or her. He or she might be moved and held for several days or weeks in two or more facilities before arriving at a Federal Processing Center. Conditions vary in these facilities, and each move adds to the emotional stress for the person, most of whom are unprepared for the harsh treatment and criminalization of their presence in this country. Holding detainees in an area where they have family members is not taken into consideration. Moreover, the current lack of waivers of inadmissibility is also unduly harsh and disruptive of family unity efforts of individuals attempting to regularize their status in a lawful manner.

Recommendations:

1. Respect and guarantee due process for migrants involved in processing centers, detention, deportation, or removal proceedings. Migrants should be informed of their rights in their native language.

2. Access to basic needs while in detention. When migrants are detained by border agents or held in short-term processing centers, they should have unlimited access to water, be provided nutritious meals to aid with recuperation, and be provided full medical attention. A licensed medical professional should be on duty 24 hours a day, 7 days a week to conduct medical assessments and provide medical services.

3. Border Patrol Processing Centers should provide migrants access to contact legal counsel and their consular office. Clean blankets and sanitary conditions inside the holding cells should be a priority. A female agent should always be present when women or children are in custody.

4. Restore discretion to immigration judges. Judges should always be able to consider the circumstances of individual cases, including such things as family and community ties to the U.S., rehabilitation, history of employment, medical conditions, military history, and the public interest.

5. Limit the scope and oppose the expansion of the mandatory detention provisions contained in IRAIRA Section 236, codified as Immigration and Nationality Act (INA) Section 236. Currently, the mandatory detention provisions of the INA allow for the detention of immigrants convicted of minor crimes, certain asylum seekers, and refugees without allowing DHS the discretion to parole vulnerable populations, such as the elderly and the mentally or physically disabled.

6. Limit the scope of and oppose the expansion of the criminal grounds of deportability, which can often result in mandatory deportation for even long-time, lawful permanent residents. The aggravated felony designation should be limited to felony offenses and should not include violations for minor crimes.

7. Expand the availability of waivers to immigrants seeking to legally re-enter the U.S. Currently, many immigrants with U.S. citizenship and LPR family members are precluded from ever lawfully returning to the U.S.

8. Enforce 90- and 180-day custody review processes. Oppose any expansion of the government's ability to indefinitely detain immigrants.

9. Reduce the use of private facilities and county jails for the detention of migrants with the goal of eliminating contracted private and county facilities altogether.

10. Create an Immigration Hotline where defense attorneys and public defenders can provide advice on immigration consequences in criminal proceedings.

11. Ensure that all immigrants are given access to the immigration courts. Currently, certain immigrants are denied the opportunity to appear before a judge, such as with expedited removal, and are instead ordered removed by border agents.

12. Limit the transfer of detainees to remote locations, and ensure that detainees remain close to the place of arrest or the place of residence. Adopt policies to keep detainees close to their families, communities, and support systems. If detainees are transferred, they and their families have a right to accurate and prompt information on reasons for transfers to other facilities.

13. All removals from the United States should take place during daylight hours. Family members should be removed together and not separated. Upon removal, detained migrants should receive their personal belongings. Migrants who do not have clothing when they are apprehended, should be provided clothing prior to removal.

14. Enforce detention facility standards and uphold basic legal rights, such as medical and mental health care and attorney access, especially at private facilities.

15. Abolish the use of residential detention that results in locking up children; at a minimum ensure that detention facilities keep parents and children together.

16. Establish an oversight committee that would monitor, periodically report on, and suggest improvements in (1) the adequacy of facilities currently holding undocumented people, (2) the system of tracking detainees and the ability of families and attorneys to obtain information on their status, and (3) the basic legal rights of persons in detention and the deportation process.

VIII. COMMUNITY SECURITY

Local, state, and federal officials must ensure that the intensifying debate on immigration does not degenerate into xenophobia and nativism. At the same time, community security must also be considered an integral part of both national and border security. Community safety and security operations should focus on dangerous criminals and traffickers, as opposed to law-abiding persons without legal status. Community security should build on and strengthen the rights and liberties of all peaceful members of a community.

Recommendations:

1. Consult with border communities. A sensible and inclusive debate must include the voices of border and immigrant communities.

2. Hold Congressional hearings and discussions within border communities. Congressional committees need to invest time and effort in engaging with border and migrant communities in order to discuss the impacts that immigration laws and the enforcement of those laws have on daily life for border and migrant communities.

3. Keep federal law within federal agencies. The Administration and Congress should ensure that the enforcement of immigration law remains within the jurisdiction of federal law enforcement.

4. Prohibit racial profiling and the misuse of "national security" authority. Local governments must ensure that the human and civil rights of their residents are respected by prohibiting local police from engaging in racial profiling under the guise of homeland security.

5. Discontinue neighborhood sweeps and workplace raids. The Border Patrol should renounce and discontinue the broad sweeps it has conducted in the border region in the recent past.

6. Prioritize community security and safety in enforcement practices. Border Patrol and ICE enforcement operations should prioritize the safety of communities in which they operate in order to prevent human rights violations. Special attention must be given to high-

speed chases of vehicles that are potentially loaded with migrants, the use of public spaces to train new Border Patrol agents, and the use of random interior check points by Border Patrol and ICE agents.

7. Use human rights and civil rights as a policy standard. The cycle of violence at the border can only be stopped if the government recognizes the civil and human rights of border communities. Any legislation or policy that fails to recognize fundamental rights is destined to fail and undermines the basic premise of security for the country.

8. Promote community education. City and county governments need resources to sponsor campaigns to inform border communities on their rights when dealing with law-enforcement officials from various agencies and human rights in general. In addition, municipalities need to sponsor a border-wide consciousness-raising campaign to develop solidarity among the various border communities. Entire border communities need to see the linkages between immigration enforcement and their own security. It is not just an immigration/immigrant issue. In addition, the campaign objectives should include building bridges between immigrant communities and Mexican Americans, Whites, African Americans, and other border residents.

9. Perform community-impact studies. Community-impact studies should be required prior to all significant local, state, and federal initiatives affecting the border. Such studies are frequently conducted to determine the effects of constructing various structures, such as hospitals and supermarkets, on the community where they are being built. A similar strategy should be in place for border security structures, policies, and practices. Community-impact studies should consider the social, cultural, and economic impacts of implementing policies, particularly security policies. The studies should also include significant consultation with the local community.

IX. JUST AND COMPREHENSIVE BORDER ECONOMIC DEVELOPMENT

The U.S. side of the border is the poorest region in the United States, yet it is a place of great importance to the U.S. economy. Mexico is the second largest U.S. trading partner, and the vast majority of that trade passes across the land border. The border region, for all its challenges, is a place of impressive growth and dynamism, and it is one of the laboratories of the American future. Key human-development measures and needs on both sides of the border include (1) continuing the robust growth of the border economy; (2) increasing employment, incomes, and other economic capabilities; (3) directing the large border economy and governmental expenditures toward human quality of life (health, education, community security); and (4) distributing resources in an equitable fashion.²⁶ Both prosperity and justice are needed in this region, and the vast government expenditures on border control should be turned toward these goals as much as possible.

²⁶ See Joan B. Anderson and James Gerber, *Fifty years of change on the U.S.-Mexico Border* (University of Texas Press, 2008).

Recommendations:

1. Cooperative economic and legal agreements between Mexico and the United States need to address the fair movement of people (as workers, family members, etc.) as well as the free movement of trade and capital. In addition, cooperative law-enforcement agreements between the two countries need to aim for community security, including open and legal residence and human rights within a context of peace and safety.

2. Investments of federal government resources in the United States should be directed toward long-term social and economic development objectives. Most notably, these would include education, health care, and infrastructure, rather than wasteful and ineffective walls and endlessly escalating enforcement operations. Intelligent choices need to be made about the use of precious taxpayer money in developing effective approaches over the long term.

3. The federal government should recognize the mutual dependence of communities on both sides of the international boundary. Impact studies of border enforcement policies need to take into account effects on legitimate border crossing and commerce. Facilitation of trade and crossing by visitors should be the first priority of CBP and other federal agencies, along with a significant commitment to community security and safety as described above. Emergency management planning should be bi-national and should prioritize public health and safety in emergencies, rather than insisting on inappropriate adherence to immigration law-enforcement priorities. In no circumstances should the immigration status of those seeking safety and help during an emergency be questioned.

4. Ports of Entry should operate in an efficient, fair, and rapid fashion. Land border Ports of Entry are crucial to the vast bi-national trade relationship between the United States and Mexico and are the lifeline of border communities. Investments need to be made in expanding and upgrading Port-of-Entry infrastructures, as well as creating Port-of-Entry policies that are consistent, transparent, and responsive to the legitimate needs of border crossers.

5. Immigration is a global economic and social phenomenon. Immigration into the United States is motivated by the impacts of economic trade agreements and structural adjustment programs and by the basic needs to seek opportunity and maintain family ties. Yet immigration policy is increasingly treated as a matter of criminal policy, which has led to criminal prosecution of those who are hardest hit by social and economic policy challenges. Criminalization is an inappropriate and unjust policy response to these wider issues.

6. The United States, Mexico, and Central American countries need to re-evaluate policies that create immigration pressures, or that at least fail to relieve them. Vast resources that are spent on ineffective walls, failed surveillance technology, and massive build-up of border immigration law enforcement should be redirected as investments in long-term solutions to migration pressures.

APPENDIX 1

U.S.-Mexico Border and Immigration Task Force Members

Elected Officials

Supervisor Sharon Bronson , Pima Board of County Supervisors, District 3, Arizona
Council Member Karin Uhlich , Council Woman, Ward 3, City of Tucson, Arizona
Marty Moreno , Sahaurita City Council, Arizona
* Manny Ruiz , Santa Cruz Board of Supervisors, Arizona
Paul Newman , Cochise County Supervisor, Arizona
R. Carlos Romero , Council Aid, Ward 1, Arizona
Ruben Segura , Former Mayor of Sunland Park, New Mexico
Eddie Espinoza , Mayor Village of Columbus, New Mexico
* Jose Rodriguez , El Paso County Attorney, Texas
Susie Byrd , El Paso City Representative, Texas
Veronica Escobar , El Paso County Commissioner, Precinct 2, Texas
Trinidad Lopez , City of Socorro Mayor, Texas
Eddie Espinoza , Mayor Village of Columbus, New Mexico

Faith

Randy Mayer, Good Shepard-Sahuarita, Arizona
Rick Ufford-Chase, Presbyterian Peace Fellowship: President, National Moderator, Arizona
Mark Adams, Frontera de Cristo – Douglas/Agua Prieta, Arizona
Seth Polley, Episcopalean Vicar Arizona Diocese, Arizona
Sister Kathleen Erickson, Sister of Mercy, New Mexico
Father Arturo Banuelas, St. Pius Catholic Community Church, El Paso, Texas

Law Enforcement

Chief Alberto Melis , Douglas Police Chief, Arizona
Sheriff Richard Wiles , Sheriff Elected, El Paso County, Texas
Greg Allen , Police Chief, El Paso, Texas
Kevin Lanahan , Administrative Assistant to the Chief of Police, El Paso, Texas

Community Organizations

Jennifer Allen , Border Action Network
Fernando Garcia , Border Network for Human Rights
Delle McCormick , Borderlinks, Arizona
Ken Kennon , Borderlinks, Arizona
Sarah Roberts , Samaritans, Arizona
Mark Townley , Humane Borders, Arizona
Cecile Lumer , Citizens for Border Solutions, Arizona
Mo Goldman , AILA-Goldman & Goldman, Arizona
Lindsay N. Marshall, Esq. , Florence Immigrant and Refugee Rights Project, Arizona
Michal Eisner , ACLU, Arizona

Andy Silverman , No More Deaths, Arizona
Frank Lopez , NonProfit Enterprise Center, El Paso, Texas
Marco Raposo , Peace and Justice Ministry, El Paso, Texas
Iliana Holguin , DMRS Executive Director, El Paso Texas
Jay Johnson , Border Ambassadors, Del Rio, Texas

Business

Fernando Gonzales , JanCo, Arizona
Maru Moreno , Chamber of Hispanic Professionals and Entrepreneurs of Arizona
Jason LeVecke , CEO Arizona Employers for Immigration Reform

Attorney at Law

Luis Fernando Parra , Private Practice, Arizona
Peter Raptis , U.S. Federal Public Defender, Arizona
Briana Stone , Paso del Norte Civil Rights Project, El Paso, Texas

Academics

Javier Duran , UA Spanish Department, Arizona
Zoe Hammer-Tomizuka , Prescott College, Arizona
Ray Michalowski , Northern Arizona University: Regent's Professor of Criminal Justice, Graduate Program
Rebecca Orozco , Cochise Community College, Arizona
Neil Harvey , NMSU Professor, Las Cruces, New Mexico
Jason Ackleson , NMSU Professor, Las Cruces, New Mexico
Professor Josiah Heyman , UTEP Anthropology Department, El Paso, Texas
Gina Nuñez , UTEP Sociology Professor, El Paso, Texas
Cristina Morales , UTEP Sociology Professor, El Paso, Texas
Irasema Coronado , UTEP Professor, El Paso, Texas
Kathy Staudt , UTEP Professor, El Paso, Texas
* Co-chairs of the US-Mexico Border and Immigration Task Force

Organizational and Individual Endorsements

Arizona

Border Action Network

California

John Carlos Frey, Gatekeeper Productions
Julia Mendoza, Student of the School of Law—University of California, Davis
Jessica Zweng, Student of the School of Law—University of California, Davis; Immigration Clinic
Diane Clyne, Sisters of Mercy
Bill Hing, Professor of the School of Law—University of California, Davis
David Flores, Casa Familiar Inc.

Illinois

Pat Murphy, Sisters of Mercy

JoAnn Persch, Sisters of Mercy

Oscar Chacon, Director of the National Alliance of Latin American and Caribbean Communities

Gilberto Rosas, Professor of the University of Illinois

Washington DC

National Immigration Forum

Jennifer Johnson, Latin America Working Group

Josh Bernstein, National Immigration Law Center (NILC)

Donald Kerwin, formerly with Catholic Legal Immigration Network (CLINIC)

Kerri Sherlock, formerly with Rights Working Group

Angela Smith-Dieng, formerly with Detention Watch Network

Maryland

Tim Dunn, Professor Department of Sociology—Salisbury University

Catherine Darcy, Sisters of Mercy

Michigan

Karen Donahue, Sisters of Mercy

New Mexico

Martina Filerio, Women's Intercultural Center

Rita Specht, Women's Intercultural Center

Nat Stone, Independent Researcher

Carlos Posadas, New Mexico State University

Robert Duran, New Mexico State University

Maria Isabel Galde, Sisters de Anuncion

Sally Meisenhelder, No More Deaths

Carole Nagengast, Professor, Department of Anthropology, University of New Mexico

Gabriella Valle, Professor, New Mexico State University

Erin Ward, Professor, New Mexico State University

Texas

Border Network for Human Rights

Patricio Patricio M. Ahumada, Jr Mayor, City of Brownsville

Philip Del Rio, El Paso Hispanic Chamber of Commerce, El Paso, Texas

Sarah Boone, Assistant to Jay Johnson-Castro, Border Ambassadors, Del Rio, Texas

Rebecca Bernhardt, American Civil Liberties Union Foundation, Texas

Yolanda Hernandez, Proyecto Azteca, Texas Valley

Gloria Melendez, AYUDA, San Elizario, Texas

Horacio Rincones, AVANCE RGV

Adrian Rivera, Cultural Artists United for Social Action

Jesus Quinonez, La Fe Clinic, El Paso, Texas
Pat Townsend, Jr., Texas Border Coalition
Verónica Villarreal, La Union del Pueblo Entero, San Juan, Texas
Monica Weisberg-Stewart, Texas Border Coalition
Ethan Sharp, UT-Pan American
Rosemary Welsh, Sisters of Mercy
Donald Bahlinger, S.J., Jesuit Parish, Our Lady of Guadalupe, San Antonio, Texas
Tony Botello, Community Action Council of South Texas
Paul Moreno, Former El Paso State Representative, Texas Legislature
Eva Moya, USMBHA
Aurolyn Luykx, Departments of Sociology and Anthropology, The University of Texas Professor
Richard Dayoub, The Greater El Paso Chamber of Commerce
Elhiu Dominguez, El Paso County Attorney's Office
Alex Flores, Brownsville Community Health Center
Chad Foster, Mayor, City of Eagle Pass
Carlos L. Garcia, Brownsville Police Department
Peter Hinde, Carmelite Fathers Justice and Peace Commission
Maureen Jerkowski, OSF, Centro Mujeres de la Esperanza
Mark Lusk, Professor, University of Texas at El Paso
Saúl Villareal, Proyecto Azteca
Stephanie Welch
Michael Wyatt, Community Advocate, El Paso, Texas
Andres Muro, Professor, El Paso Community College
Jimmy Palacio, Rural Development and Finance Corporation
Ricardo Perez, Texas Rio Grande Legal Aid, Inc.
Diana Ramirez, Office of City of El Paso Representatives Ann Morgan Lilly and Beto O'Rourke
L. Edward Rios, Kemp Smith LLP
Carmen Rodriguez, Director of Texas Río Grande Legal Aid
Raymundo Eli Rojas, Director of Las Américas Immigrant Advocacy Center
Patricia Salazar, Latinos Unidos
Martha Sanchez, La Unión del Pueblo Entero
Jo Ann Bernal, El Paso County Attorney's Office
Michael Seifert, Proyecto Digna, Inc., San Felipe Catholic Church

Virginia

Tom Brenneman, Sonoran Borderlands Peacebuilding Initiative
Lisa Schirch, 3D Security Initiative

Mr. Sam F. Vale

President

Starr-Camargo Bridge Co.

Rio Grande City, Texas

Hearing Testimony

U.S. Senate

Committee on the Judiciary

Subcommittee on Immigration, Border Security and Citizenship

“Securing the Borders and America’s Ports of Entry, What Remains to Be Done”

Wednesday, May 20, 2009

10:00 a.m.

226 Dirksen Senate Office Building

Washington, DC 20510

Good morning Chairman Schumer, Ranking Member Cornyn and other distinguished Members of the Subcommittee. Thank you for inviting me to testify at this important hearing focused on security at our nation's borders and ports of entry. My name is Sam Vale and I am the President of the Starr-Camargo Bridge in Rio Grande City, Texas. I am also a founding Board Member of the Border Trade Alliance (BTA), as well as Chair of the Public Policy Committee. The BTA has been around since 1986 and has grown to represent over 2 million border stakeholders who are involved with all aspects of trade, travel, security and commerce in our border communities along the U.S. – Canada and U.S. – Mexico borders.

Mr. Chairman, the purpose of today's hearing is a question that those of us at the border have been asking ourselves and of the federal government for a long time and I anticipate that we will continue to do so well into the future. The security of our borders is not something that is static and is dependent on Comprehensive Immigration Reform. The very nature of trade, travel and cross-border commerce within the context of the concerns with terrorism require that we stay ever vigilant and prepared. Over the past eight years the federal government has taken many steps to enhance security at our land ports of entry and between them. However, not all these steps have been taken in the same direction. The implementation of multiple layers of security, especially at our land ports of entry, where all legitimate cross-border commerce and trade occurs has not been without its negative impacts on another aspect of border and national security, that of our economic security. This is certainly a significant factor in our future economic survival.

Our border communities, along our shared borders with Canada and Mexico, support diverse international economies that are dependent upon cross-border trade and travel. A large percentage of traffic at our borders is repeat, daily crossers who account for a significant portion of the sales taxes, property taxes and the commercial revenues generated which are subject to IRS collections. Our border communities are responsible for conducting more than \$2 billion cross-border trade at our land ports each and every day.

As I mentioned, the policies and procedures designed to facilitate secure trade and travel at our borders have changed dramatically during the past decade. However, the failure to successfully legislate a Comprehensive Immigration Reform Package has created significant challenges the foundation for all other security programs. The increased federal inspection changes at our borders have not occurred without reasonable concerns about their impact on legitimate trade and commerce. Similarly, the incredible growth in trade at our borders has not been without its share of growing pains. The infrastructure at our border crossings, for the most part, has not kept up with the increased volume of trade and travel.

U.S. land ports of entry last year conducted a record \$830 billion in cross-border trade. According to the U.S. Department of Transportation Bureau of Transportation Statistics

in 2008, U.S. land border crossings processed 45.7 million pedestrians, more than 10.7 million trucks and more than 107.5 million personal vehicles.

It has become apparent during the past decade that all too often during the deliberation and development of U.S. border policy, the prevailing mindset in Washington, D.C. is that one-size fits all. While there are shared underlying issues along both the U.S.-Canada and U.S.-Mexico borders, such as the ongoing need to invest significantly to increase capacity and update infrastructure at our busiest land ports of entry. However, there are many challenges and complex dynamics that are unique to each of our borders with our NAFTA partners. With over 30 years of hands on border operational experiences, I strongly urges this Committee, Congress and the Administration to not neglect our unique bi-lateral relationships with Canada and Mexico, along with the individual needs and concerns of these relations in pursuit of a one-size fits all, national border policy.

Our land ports of entry do not have the infrastructural capacity to adequately handle outbound inspections into Canada or Mexico, yet there have been calls for Congress to require DHS to do exactly that. In fact without proper Immigration Reform the data base for all security programs is inadequate and constantly changing.

Congress simply has to do more to address the decades old backlog in our Immigration Codes as well as adequate annual infrastructural investments needed at U.S. land ports of entry. Today the majority of our land ports were designed without anticipation of the vast federal security operations now present at all U.S. border crossings.

The increased security presence at our border crossing in Texas has overwhelmed our existing infrastructure. Our import lots become parking lots for unmanned border patrol units. Most existing port of entry, were designed and built a half century or more ago. Our ability to protect our nation in both terms of physical and economic security while generating more cross-border economic activity with our two largest export markets in Canada and Mexico is limited by our infrastructure and human resources.

Delays and long lines hamper cross-border commerce and trade, causing just-in-time manufacturing to give way to just-in-case; prompting lower crossing numbers for work or pleasure to our neighboring communities in Canada and Mexico, which in turn reduce both tax revenues and toll revenue which results in our lessened ability at the local level to reinvest in infrastructure to support legitimate trade and travel.

The \$720 million included for land port infrastructure upgrades as part of the American Recovery and Reinvestment Act was a very appreciated step forward.

However, with the exception of the Mariposa, Arizona and San Ysidro, California ports of entry, the majority of projects funded by Customs and Border Protection and the General Services Administration using these stimulus dollars were for small land ports of entry with low crossing volumes. A note of interest here is that Secretary Napolitano has noted that the Mariposa port in Arizona was design completed when she was Governor,

lacking only the funding. If we are to increase the security of our land ports and enhance our ability to generate more national economic activity through trade, we need to reinvest more in upgrading our land border crossings and focus first on areas with the greatest impact. We need to use annual appropriations to fix these items and not one time stimulus dollars which need to be allowed to do their job as advertised.

DHS, in conjunction with its federal agency partners, needs to collaborate to expedite the approval process for the prioritization, selection and funding of land border infrastructure projects that improve the facilitation of cross-border trade and travel. Congress can help by committing more funds toward border port infrastructure while also looking at reducing the time it takes for any project at our ports to comply with all the regulatory requirements before construction, specifically the process of obtaining presidential permits from the State Department.

Further, we need to take a hard look at all our current layers of security at and between our ports of entry. Congress should urge the Department of Homeland Security to assume the leadership role among federal agencies in conducting a performance and utility assessment of the multiple layers of federal security programs and policies that currently govern legitimate trade and travel along the U.S. shared borders with Canada and Mexico. In short, DHS needs to ask the tough questions: Are these programs effective? Can they be better integrated and harmonized to increase both security and the efficiency of trade and travel? Can they be more effective and efficient with additional resources and improved infrastructure?

Mr. Chairman, I would submit that before Congress mandates any further layers of security at our borders that we examine thoroughly what we already have in place. Adding yet another requirement for DHS to implement without changing the infrastructure at our ports and committing more resources, more boots on the ground, is unlikely to yield much in return in terms of security, while having a serious impact on the facilitation of legitimate trade and travel.

In short, Congress has to ensure that scarce federal dollars are committed toward programs, policies, and projects that result in the greatest benefit in terms of economic and physical security. Successful border security efforts require the utilization of risk-based assessments based upon real-time intelligence to direct the most efficient allocation of scarce federal resources in order to attain the greatest security benefit.

Finally at the foundation to all security inspections is identifying the people who enter and leave our country. To do that a fundamental need is Comprehensive Immigration Reform.

In conclusion, I would like to thank the Chairman and Ranking Member along with all the Members of this Committee for its focus on the need to achieve adequate Immigration Reform as well as balance between security and facilitation of legitimate travel at our borders. I offer the assistance of all of our colleagues that live and work along the border along with the BTA working identifying solutions to these important border issues.

Again, I am honored to participate in this hearing and it will be my pleasure to address any questions you may have.

Thank you.

Respectfully submitted,

Sam F. Vale
President
Starr-Camargo Bridge Co.

Chair, Border Trade Alliance
Public Policy Committee

"Securing the Borders and America's Points of Entry, What Remains to Be Done"
 Prepared Statement of
 Sheriff Richard Wiles
 El Paso County, Texas
 before the
 U.S. Senate Committee on the Judiciary
 Subcommittee on Immigration, Border Security and Citizenship
 Wednesday, May 20, 2009 • 10:00 AM

Good afternoon, my name is Richard Wiles and I want to thank you for taking the time to address this important national issue. Immigration reform is a complex issue that affects many people as well as different levels and branches of government and the role that border issues play within immigration reform is a unique and important one. In December of 2007, I retired as the Chief of Police of the El Paso, Texas Police Department after 26 years of service. I am currently the Sheriff of El Paso County, Texas.

El Paso County has a population of over 700,000 and continues to grow at a rapid pace, thanks in large part to the growth of our military base, Fort Bliss. For the last 12 years, El Paso has been named the second or third safest large city in the United States through a yearly publication from an independent non-profit research group called Morgan Quinto.

People often ask how it is possible for El Paso to be such a safe community, given the fact that El Paso is right on the border with Juarez, Mexico, one of the most violent cities in the world. El Paso remains a major drug corridor for drugs coming into the United States from Mexico, as well as a corridor for weapons and money heading back into Mexico. It is also a poor community, with a large transient population and a large immigrant population. This is where the complexity begins.

I will point out, that as a member of the U.S.-Mexico Border and Immigration Task Force, I know there has been much work completed on a comprehensive strategy to deal with the issues involved in immigration reform. It is difficult to engage in law enforcement and criminal justice contemporary practices when members of the community are afraid to step forward for fear of deportation. It is clear that comprehensive reform is needed and necessary and will ultimately address issues important to law enforcement. In developing a comprehensive response to immigration, it is imperative that Congress has an understanding of the unique issues facing El Paso and many other border communities. The issues we face cannot be lumped together when drafting the appropriate response to immigration and border security. There is a significant difference between immigration enforcement, particularly as it relates to undocumented immigrants, and criminal law enforcement, which is independent from immigration issues.

From a law enforcement perspective, the first issue I want to discuss is illegal immigration and undocumented immigrants. There seems to be a misperception in some communities across our country that people who illegally enter our country from Mexico do so for the purpose of engaging in criminal activity. This could not be further from the truth. In fact, even members of the U.S. Border Patrol will, without hesitation, admit that the vast majority are here for economic reasons. In many respects, they enter illegally knowing there are U.S. employers that want and need the labor they provide. With the current immigration system, it's as if we are waving them in with one hand and telling them to stop with the other.

What should be the law enforcement response to illegal immigration in our local communities? I am not pro-illegal immigration. As a law enforcement officer, I respect the laws of our country and the necessity for them to be followed to provide for an orderly and safe society. Immigration and immigration enforcement rest solely with the federal government and federal agencies. Yet, when the government ignores its duties and obligations, this burden falls increasingly on state and local law enforcement, and this is especially true in border communities.

In the past, there has been discussion of local, county and state law enforcement agencies "assisting" in the area of immigration enforcement; this is not good policy. While Chief of Police in El Paso, I was a member of the Major Cities Chiefs Association. This organization is comprised of the leaders of the largest sixty-four law enforcement agencies (local and county) in the United States and Canada. I was one of nine members of an immigration subcommittee that ultimately made recommendations to the full Association, which were adopted in June 2006. I have attached a copy of the report for your review.

The general recommendation of the Major Cities Chiefs Association was that local law enforcement should not be engaged in the enforcement of federal immigration law. Although there are many reasons for this, I will concentrate on two main ones. First, local agencies lack resources to engage in the enforcement of immigration law that are clearly the responsibility of the federal government. Secondly, local law enforcement depends on the cooperation of the community it serves to prevent and solve crimes in its jurisdiction. In fact, many local agencies spend large amounts of time, energy, and money (mostly through federal funding such as Community Oriented Policing grants) building

relationships for just this purpose. The enforcement of federal immigration laws by local law enforcement will undermine these efforts and impair cooperation and communication between local law enforcement and the communities they serve.

Additionally, last year I attended a conference on local law enforcement and immigration enforcement put on by the Police Foundation in Washington D.C., which was well-attended. The vast majority of agency heads present at that conference agreed with the findings of the Major Cities Chiefs Association that the work of state and local law enforcement officers is undermined when they act as federal immigration agents. Section 287(g) of the Immigration and Nationality Act was also discussed. This is the federal law that allows Immigration and Customs Enforcement (ICE) to enter into agreements with local law enforcement agencies to enforce federal immigration law. Section 287(g) was expanded from its original intent and, as such, is no longer feasible or appropriate for the reasons I have already stated. The Police Foundation is scheduled to release a new report this afternoon discussing how local immigration enforcement challenges the public safety mission of law enforcement agencies. The report is titled, "*The Role of Local Police: Striking a Balance Between Immigration Enforcement and Civil Liberties.*"

Federal agencies have the personnel, training, equipment and systems in place to handle immigration enforcement. If they are deficient in any of these areas, that is something for them to overcome, not a reason to put an additional burden on local, county and state agencies which are already struggling to keep up with the demands they face.

The second issue I would like to address relates to the unique criminal issues faced by law enforcement agencies in our border communities. Due to the demand all across our

nation, illegal drugs continue to flow North while money and weapons flow South. In addition, border communities must deal with human smuggling and border crime, which many times are offenses committed against undocumented immigrants. These crimes include robbery, sexual assault, kidnapping, and even murder.

These acts clearly are within our jurisdiction and responsibility and take law enforcement resources away from our neighborhoods when we have to respond to them. We understand we have an obligation to protect ALL persons within our borders and we respond appropriately without regard to immigration status. Our purpose is to prevent crime and when we fail to do that, to apprehend criminal offenders. We also understand that when we arrest a drug smuggler, drug seller, human smuggler or rapist, it prevents drugs and crime from expanding into other areas of our country. In this regard, we are truly at the front lines using local resources to address a national problem.

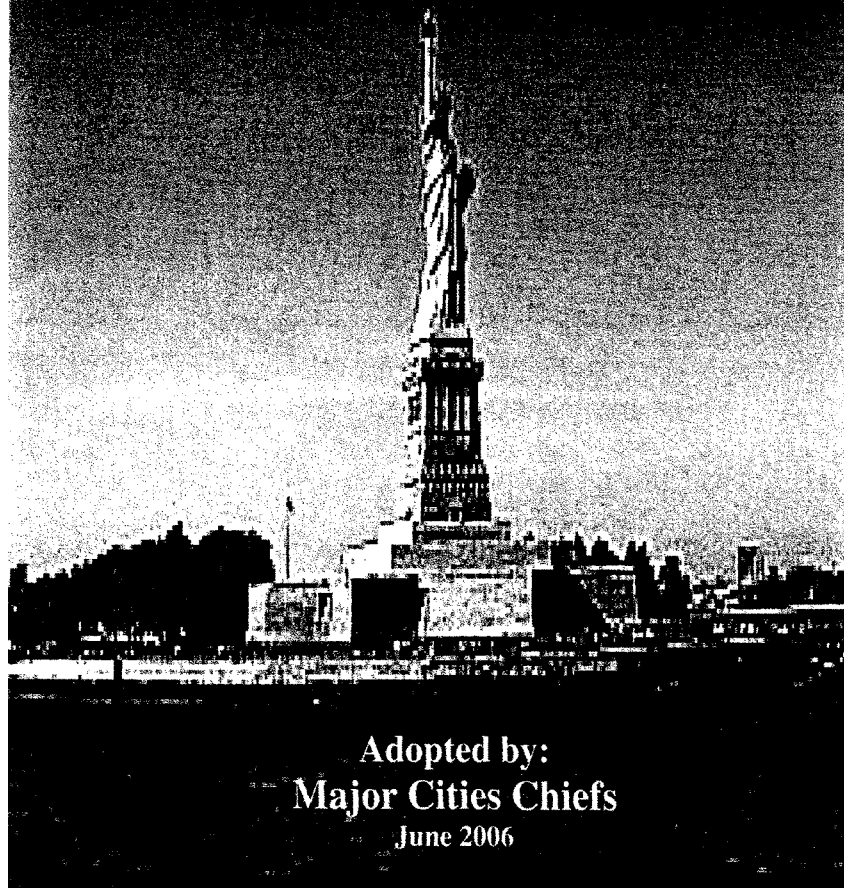
Ultimately, our main concern is border and community security. Our position on immigration enforcement works and it shows in the fact that we are an extremely safe community. El Paso wants to remain one of the safest large cities in the United States. We are growing and expanding and we want to maintain the safety and security necessary for our citizens to be free from crime and the fear of crime. I believe that if we became involved in federal immigration enforcement, that trust and respect we have with our community would fracture and fail. It would create a communication gap that would hamper our ability to continue our efforts in crime reduction.

If the federal government needs the help of local law enforcement, it would be better concentrated on issues related to crime. We are already working with many federal

agencies on issues such as drug smuggling, weapons trafficking, gangs, vehicle thefts, etc. With the proper resources, we stand ready to assist our federal and state partners on issues that are important to all of us and most certainly the communities we serve and represent. Ultimately, the entire nation benefits when we are successful at stopping the flow of illegal drugs and preventing criminals from continuing to victimize our citizenry.

**M.C.C. IMMIGRATION COMMITTEE
RECOMMENDATIONS**

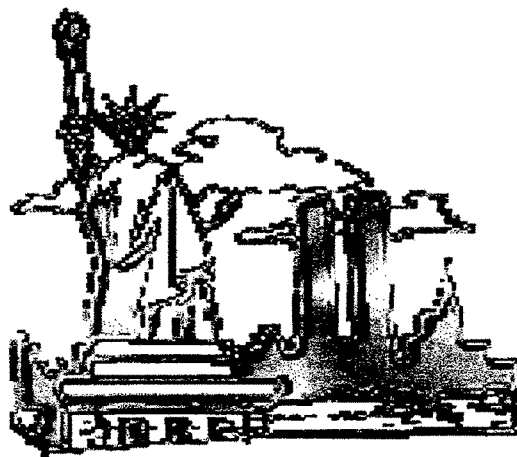
**For Enforcement of
Immigration Laws By Local
Police Agencies**



**Adopted by:
Major Cities Chiefs
June 2006**

Prepared By:

**M.C.C. IMMIGRATION
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M.C.C. NINE (9) POINT POSITION **STATEMENT**

ENFORCEMENT OF IMMIGRATION LAWS BY LOCAL POLICE AGENCIES

A. STATEMENT OF ISSUE

Illegal immigration is a problem that faces our nation and society as a whole and one, which must be dealt with at the national level. It is absolutely critical that our country develop a consistent unified national plan to deal with immigration and this plan must include the critical component of securing our borders to prevent illegal entry into the United States.

Since the horrendous attacks of September 11, 2001, local law enforcement has been called upon to do its part in protecting the nation from future terrorist attacks. The response of local law enforcement to the call to protect the homeland has been tremendous. Today, local police agencies stand as the first line of defense here at home to prevent future attacks. Local law enforcement's unending efforts include providing additional training and equipment to officers, increasing communication and coordination with federal agencies, gathering, assessing and sharing intelligence, modifying patrol methods and increasing security for potential targets such as power plants, airports, monuments, ports and other critical facilities and infrastructure. Much of these efforts have been at a high cost to local budgets and resources.

The federal government and others have also called upon local police agencies to become involved in the enforcement of federal immigration laws as part of the effort to protect the nation. This issue has been a topic of great debate in the law enforcement community since September 11. The call for local enforcement of federal immigration laws has become more prominent during the debate over proposed immigration reform at the national level.

Major city police departments have a long undeniable history of working with federal law enforcement agencies to address crime in the United States whether committed by citizens, visitors, and/or illegal immigrants. Local police agencies have not turned a blind eye to crimes related to illegal immigration. They have and continue to work daily with federal agencies whenever possible and to the extent allowable under state criminal law enforcement authority to address crimes such as human trafficking and gang violence which have a nexus with illegal immigration.

How local agencies respond to the call to enforce immigration laws could fundamentally change the way they police and serve their communities. Local enforcement of federal immigration laws raises many daunting and complex legal, logistical and resource issues for local agencies and the diverse communities they serve. Some in local law enforcement would embrace

immigration enforcement as a means of addressing the violation of law represented by illegal immigration across our borders. Many others recognize the obstacles, pitfalls, dangers and negative consequences to local policing that would be caused by immigration enforcement at the local level.

It is important for Major Cities Chiefs [M.C.C.] as a leader and representative of the local law enforcement community develop consensus on this important subject. The purpose of this position statement is to evaluate and address the impact and potential consequences of local enforcement of federal immigration laws and highlight steps, which if taken might allow local agencies to become involved in immigration enforcement. It is hoped that this statement will help to draw attention to the concerns of local law enforcement and provide a basis upon which to discuss and shape any future national policy on this issue. In this regard it is absolutely critical that M.C.C. be involved in all phases of this debate from developing this official position statement to demanding input and involvement in the development of any national initiatives.

B. OVERVIEW OF IMMIGRATION AND IMMIGRANT STATUS

The federal government has the clear authority and responsibility over immigration and the enforcement of immigration laws. With this authority, the federal government has enacted laws, such as the Immigration and Naturalization Act (INA), that regulate a person's entry into the United States, his or her ability to remain in the country, and numerous other aspects of immigration. The federal government has given federal agencies such as Immigration and Customs Enforcement [I.C.E.] the specific authority to investigate a person's immigration status and deport individuals who have no legal status or authority to be in the United States.

Under the current immigration laws there exists various immigration status classifications. The immigration status of any particular person can vary greatly. The most common status classifications include the following:

- 1) **Legal Immigrants** are citizens of other countries who have been granted a visa that allows them to live and work permanently in the United States and to become naturalized U.S. citizens. Once here, they receive a card, commonly referred to as a "green card" from the federal government indicating they are permanent residents. Some legal immigrants are refugees who fear persecution based on race, religion, nationality, membership in a particular social group, or political opinion in their home countries. Refugees are resettled every year in the United States after their requests for asylum have been reviewed and granted.
- 2) **Nonimmigrant Visa Holders** are persons who are granted temporary entry into the United States for a specific purpose, such as visiting, working, or studying. The U.S. has 25 types of nonimmigrant visas, including A1 visas for ambassadors, B2 visas for tourists, P1 visas for foreign sports stars who play on U.S. teams and TN visas for Canadians and Mexicans entering the U.S. to work under NAFTA. Visa Holders are allowed to stay in the U.S. as long as they meet the terms of their status.

- 3) **Illegal Immigrants** are citizens of other countries who have entered or remained in the U.S. without permission and without any legal status. Most illegal immigrants cross a land or sea border without being inspected by an immigration officer. Some person falls into illegal status simply by violating the terms of a legal entry document or visa.
- 4) **Absconders** are persons who entered the United States legally but have since violated the conditions of their visa and who have had a removal, deportation, or exclusion hearing before an immigration judge and are under a final order of deportation and have not left the United States.

Currently there are between 8-12 million illegal immigrants living in the U.S., with another estimated 800,000 illegal immigrants entering the country every year. These immigrants by their sheer numbers have become a significant part of local communities and major cities in our nation. Some major urban areas estimate that their immigrant communities, regardless of immigration status, comprise 50%-60% of the local population and other areas report similar trends. The reality for major local police agencies throughout the nation is that the communities they serve and protect are diverse and include significant immigrant communities including documented and undocumented immigrants.

C. CONCERNS WITH LOCAL ENFORCEMENT OF FEDERAL IMMIGRATION LAWS

Local police agencies must balance any decision to enforce federal immigration laws with their daily mission of protecting and serving diverse communities, while taking into account: limited resources; the complexity of immigration laws; limitations on authority to enforce; risk of civil liability for immigration enforcement activities and the clear need to foster the trust and cooperation from the public including members of immigrant communities.

1) Undermine Trust and Cooperation of Immigrant Communities

Major urban areas throughout the nation are comprised of significant immigrant communities. In some areas the immigrant community reaches 50-60 percent of the local population. Local agencies are charged with protecting these diverse populations with communities of both legal and illegal immigrants. The reality is that undocumented immigrants are a significant part of the local populations major police agencies must protect, serve and police.

Local agencies have worked very hard to build trust and a spirit of cooperation with immigrant groups through community based policing and outreach programs and specialized officers who work with immigrant groups. Local agencies have a clear need to foster trust and cooperation with everyone in these immigrant communities. Assistance and cooperation from immigrant communities is especially important when an immigrant, whether documented or undocumented, is the victim of or witness to a crime. These persons must be encouraged to file reports and come forward with information. Their cooperation is needed to prevent and solve crimes and maintain public order, safety, and security in the whole community. Local

police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terroristic attacks and strengthen homeland security.

Immigration enforcement by local police would likely negatively effect and undermine the level of trust and cooperation between local police and immigrant communities. If the undocumented immigrant's primary concern is that they will be deported or subjected to an immigration status investigation, then they will not come forward and provide needed assistance and cooperation. Distrust and fear of contacting or assisting the police would develop among legal immigrants as well. Undoubtedly legal immigrants would avoid contact with the police for fear that they themselves or undocumented family members or friends may become subject to immigration enforcement. Without assurances that contact with the police would not result in purely civil immigration enforcement action, the hard won trust, communication and cooperation from the immigrant community would disappear. Such a divide between the local police and immigrant groups would result in increased crime against immigrants and in the broader community, create a class of silent victims and eliminate the potential for assistance from immigrants in solving crimes or preventing future terroristic acts.

2) Lack of Resources

The budgets and resources of local police agencies are not unlimited. Local police agencies struggle every year to find the resources to police and serve their respective communities. Since the events of September 11, local agencies have taken on the added duty of serving as the first line of defense and response to terrorist attacks for our country. These efforts on the local level to deter and prevent another terrorist attack and to be prepared to respond to the aftermath of an attack have stretched local resources even further. Since the creation of the Homeland Security Department, federal funding for major city police departments has been greatly reduced. Local agencies have also had to take on more responsibilities in areas that have traditionally been handled by the F.B.I. whose investigative resources are now more focused on counter-terrorism efforts. Local agencies are forced to fill the gap left by the shift of federal resources away from investigating white-collar crimes and bank robberies; areas traditionally handled by federal agencies.

Enforcement of federal immigration laws would be a burden that most major police agencies would not be able to bear under current resource levels. The cost in terms of personnel, facilities and equipment necessary for local agencies to address the 8-12 million illegal immigrants currently living in the United States would be overwhelming. The federal government which has primary authority to enforce immigration laws has itself failed to provide the tremendous amount of resources necessary to accomplish such enforcement to its own agencies specifically charged with that responsibility. Local communities and agencies have even fewer resources to devote to such an effort than the federal government given all the numerous other demands on local police departments.

Local police agencies must meet their existing policing and homeland security duties and can not even begin to consider taking on the added burden of immigration enforcement until federal assistance and funding are in place to support such enforcement. Current calls for local police agencies to enforce immigration come with no clear statement or guarantee to provide

adequate federal funding. Local agencies also fear that the call for local enforcement of immigration laws signals the beginning of a trend towards local police agencies being asked to enter other areas of federal regulation or enforcement.

3) Complexity of Federal Immigration Law

Federal immigration laws are extremely complicated in that they involve both civil and criminal aspects. The federal government and its designated agencies such as I.C.E. and the Department of Justice have clear authority and responsibility to regulate and enforce immigration laws. It is these federal agencies who have the authority to determine if a person will be criminally prosecuted for their violations of immigration laws or be dealt with through a civil deportation process. Based on their authority, training, experience and resources available to them, these federal agencies and the federal courts are in the best position to determine whether or not a person has entered or remained in the country in violation of federal regulations and the applicability of criminal sanctions.

Immigration violations are different from the typical criminal offenses that patrol officers face every day on their local beats. The law enforcement activities of local police officers revolve around crimes such as murder, assaults, narcotics, robberies, burglaries, domestic violence, traffic violations and the myriad of other criminal matters they handle on a regular basis. The specific immigration status of any particular person can vary greatly and whether they are in fact in violation of the complex federal immigration regulations would be very difficult if not almost impossible for the average patrol officer to determine. At this time local police agencies are ill equipped in terms of training, experience and resources to delve into the complicated area of immigration enforcement.

4) Lack of Local Authority and State Law Limitations of Authority

The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration.

Laws in their respective states define the authority of local police officers. The authority of local police officers to act to enforce against criminal acts is clear and well established. However, federal immigration laws include both civil and criminal process to address immigration violations. It is within the authority of federal agencies such as I.C.E. and the Department of Justice to determine if an immigration violation will be dealt with as a criminal matter or through a civil process. Given the complexity of the immigration laws, it would be difficult for local police agencies to determine if a particular violation would result in criminal charges or purely civil proceedings and regulation. This duality in immigration law creates a gap in authority for local police officers who generally are limited to acting only in criminal matters.

In addition state laws may restrict a local police officer's authority to act even in criminal matters in such a way that it would prevent or hinder the officer's ability to investigate, arrest or detain a person for immigration violations alone. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police

officers may be constrained by local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

An example of this conflict between the civil nature of immigration enforcement and the established criminal authority of local police exists in the federal initiative of placing civil immigration detainer notices on the N.C.I.C. system. The N.C.I.C. system had previously only been used to notify law enforcement of strictly criminal warrants and/or criminal matters. The civil detainees being placed on this system by federal agencies notify local officers that the detainees are civil in nature by including a warning that local officers should not act upon the detainees unless permitted by the laws of their state. This initiative has created confusion due to the fact that these civil detainees do not fall within the clear criminal enforcement authority of local police agencies and in fact lays a trap for unwary officers who believe them to be valid criminal warrants or detainees.

5) Risk of Civil Liability

In the past, local law enforcement agencies have faced civil litigation and liability for their involvement in immigration enforcement. For example, the Katy, Texas Police Department participated in an immigration raid with federal agents in 1994. A total of 80 individuals who were detained by the police were later determined to be either citizens or legal immigrants with permission to be in the country. The Katy police department faced suits from these individuals and eventually settled their claims out of court.

Because local agencies currently lack clear authority to enforce immigration laws, are limited in their ability to arrest without a warrant, are prohibited from racial profiling and lack the training and experience to enforce complex federal immigration laws, it is more likely that local police agencies will face the risk of civil liability and litigation if they chose to enforce federal immigration laws.

D. M.C.C. NINE (9) POINT POSITION STATEMENT

Based upon a review, evaluation and deliberation regarding the important and complex issue of local enforcement of federal immigration laws, the members of M.C.C., who are the 57 Chief Executive Officers of police departments located within a metropolitan area of more than 1.5 million population and which employs more than 1,000 law enforcement officers, hereby set forth our consensus position statement, which is comprised of nine crucial components.

1) SECURE THE BORDERS

Illegal immigration is a national issue and the federal government should first act to secure the national borders to prevent illegal entry into the United States. We support further and adequate funding of the federal agencies responsible for border security and immigration enforcement so they can accomplish this goal. We also support consideration of all possible solutions including construction of border fences where appropriate, use of surveillance technologies and increases in the number of border patrol agents. Only when the federal government takes the necessary steps to close the revolving door that exists at our national borders will it be possible for local police agencies to even begin to consider dedicating limited local resources to immigration enforcement.

2) ENFORCE LAWS PROHIBITING THE HIRING OF ILLEGAL IMMIGRANTS

The federal government and its agencies should vigorously enforce existing immigration laws prohibiting employers from hiring illegal immigrants. Enforcement and prosecution of employers who illegally seek out and hire undocumented immigrants or turn a blind eye to the undocumented status of their employees will help to eliminate one of the major incentives for illegal immigration.

3) CONSULT AND INVOLVE LOCAL POLICE AGENCIES IN DECISION MAKING

Major Cities Chiefs and other representatives of the local law enforcement community such as the International Association of Chiefs of Police and local district attorneys and prosecutors should be consulted and brought in at the beginning of any process to develop a national initiative to involve local police agencies in the enforcement of federal immigration laws. The inclusion of local law enforcement at every level of development would utilize their perspective and experience in local policing, address their concerns and likely result in a better program that would be more effectively implemented.

4) COMPLETELY VOLUNTARY

Any initiative to involve local police agencies in the enforcement of immigration laws should be completely voluntary. The decisions related to how local law enforcement agencies allocate their resources, direct their workforce and define the duties of their employees to best serve and protect their communities should be left in the control of state and local governments. The decision to enter this area of enforcement should be left to the local government and not mandated or forced upon them by the federal government through the threat of sanctions or the withholding of existing police assistance funding.

5) INCENTIVE BASED APPROACH WITH FULL FEDERAL FUNDING

Any initiative to involve local police agencies in the enforcement of immigration laws should be an incentive based approach with full federal funding to provide the necessary resources to the local agencies that choose to enforce immigration laws. Federal funds should be available to participating local agencies to cover the costs associated with enforcement such as expenditures on equipment and technology, training and educational programs and costs of housing, caring for and transporting immigrants prior to their release to federal authorities.

6) NO REDUCTION OR SHIFTING OF CURRENT ASSISTANCE FUNDING

The funding of any initiative to involve local police agencies in the enforcement of immigration laws should not be at the detriment or reduction directly or indirectly of any current federal funding or programs focused on assisting local police agencies with local policing or homeland security activities. Local police agencies are currently working on strained budgets and limited resources to meet local policing needs and strengthening homeland security and in fact need increased funding and grant assistance in these areas. Merely shifting or diverting federal funding currently available for local policing and homeland security activities to any new immigration enforcement initiative would only result in a detrimental net loss of total resources available to local police agencies to police their neighborhoods and strengthen homeland security.

7) CLARIFICATION OF AUTHORITY AND LIMITATION OF LIABILITY

The authority of local police agencies and their officers to become involved in the enforcement of immigration laws should be clearly stated and defined. The statement of authority should also establish liability protection and an immunity shield for police officers and police agencies that take part in immigration enforcement as authorized by clear federal legislation.

**8) REMOVAL OF CIVIL IMMIGRATION DETAINERS
FROM THE N.C.I.C. SYSTEM**

Until the borders are secured and vigorous enforcement against employers who hire illegal immigrants has taken place and the concerns regarding lack of authority and confusion over the authority of local agencies to enforce immigration laws and the risk of civil liabilities are adequately addressed, M.C.C. strongly requests that the federal agencies cease placing civil immigration detainees on N.C.I.C. and remove any existing civil detainees currently on the system. The integrity of the system as a notice system for criminal warrants and/or criminal matters must be maintained. The inclusion of civil detainees on the system has created confusion for local police agencies and subjected them to possible liability for exceeding their authority by arresting a person upon the basis of a mere civil detainee.

M.C.C. would encourage the federal agencies to seek federal criminal warrants for any person they have charged criminally with violations of immigration laws and submit those criminal warrants on the N.C.I.C. system so the warrants can be acted upon by local police officers within their established criminal enforcement authority and training.

9) COMMITMENT OF CONTINUED ENFORCEMENT AGAINST CRIMINAL VIOLATORS REGARDLESS OF IMMIGRATION STATUS

M.C.C. member agencies are united in their commitment to continue arresting anyone who violates the criminal laws of their jurisdictions regardless of the immigration status of the perpetrator. Those immigrants, documented and/or undocumented, who commit criminal acts will find no safe harbor or sanctuary from their criminal violations of the law within any major city but will instead face the full force of criminal prosecution.

TESTIMONY OF
THOMAS WINKOWSKI
ASSISTANT COMMISSIONER
OFFICE OF FIELD OPERATIONS

AND

DAVID AGUILAR
CHIEF
OFFICE OF BORDER PATROL

U.S. CUSTOMS AND BORDER PROTECTION
DEPARTMENT OF HOMELAND SECURITY

BEFORE

SENATE JUDICIARY COMMITTEE

SUBCOMMITTEE ON IMMIGRATION, REFUGEES, AND
BORDER SECURITY

May 20, 2009
Washington, DC

Chairman Schumer, Senator Cornyn, Senators of the Subcommittee, it is a privilege and an honor to appear before you today to discuss the work of U.S. Customs and Border Protection (CBP), particularly the tremendous dedication of our men and women in the field both at and between our ports of entry.

I want to begin by expressing my continuing gratitude to Congress for its enduring support to the mission and people of CBP. It is clear that the Congress is committed to providing us the resources we need in order to increase and maintain the security of our borders. We appreciate your efforts and assistance.

I would also like to thank you for your support in the American Recovery and Reinvestment Act of 2009, which provided \$680 million to CBP for greatly needed improvements in our aging infrastructure and for the addition of new technology at our nation's borders. These funds will support planning, management, design, alteration, and construction of CBP-owned land ports of entry; procurement and deployment of non-intrusive inspection system; expedited development and deployment of border security technology on the southwest border; and for the procurement and deployment of tactical communications equipment. In addition, the bill also included \$300 million for the construction and repair of land ports of entry owned by the General Services Administration (GSA). Secretary Napolitano has made clear that we are to move swiftly and with great transparency as we put these investments to use.

CBP is the largest uniformed, Federal law enforcement agency in the country. We station over 20,000 CBP officers at access points around the Nation – air, land, and sea ports. By the end of FY 2009, we will have deployed over 20,000 Border Patrol agents between the ports of entry. These forces are supplemented with 980 Air and Marine agents, 2,260 agricultural specialists, and other professionals. These personnel are key players to the implementation of Secretary Napolitano's Southwest Border Security Initiative.

I am pleased to report that CBP continues to perform all of our missions successfully, which include stemming the flow of illegal drugs and contraband, protecting our agricultural and economic interests from harmful pests and diseases, protecting American businesses from theft of their intellectual property, enforcing textile agreements, tracking import safety violations, regulating and facilitating international trade, collecting import duties, facilitating legitimate travel, and enforcing United States trade laws. At the same time, our employees maintain a vigilant watch for terrorist threats. In FY 2008, CBP processed more than 396 million pedestrians and passengers, 122 million conveyances, 29 million trade entries, examined 5.6 million sea, rail, and truck containers, performed over 25 million agriculture inspections, apprehended over 720 thousand illegal aliens between our ports of entry, encountered over 220 thousand inadmissible aliens at the ports of entry, and seized more than 2.8 million pounds of illegal drugs.

We must perform our important security and trade enforcement work without stifling the flow of legitimate trade and travel that is so important to our Nation's economy. These are our twin goals: border security and facilitation of legitimate trade and travel.

Border Security Between the Ports of Entry

The primary goal of our strategy between the ports of entry is to gain effective control of our Nation's borders. Effective control is achieved when a Chief Patrol Agent determines that agents deployed in a given area consistently: detect illegal entries into the United States, assess and classify any threats associated with the illegal entries, respond to the area, and bring the situation to a successful law enforcement resolution.

During Secretary Napolitano's congressional hearing a few weeks ago, she explained the importance of having a border security strategy that incorporates the elements of effective control. CBP establishes operational control through a balanced combination of technology, personnel, and tactical infrastructure allowing Border Patrol agents to confront the criminal element. Secretary Napolitano often refers to this strategy as the "three-legged stool." One of these legs cannot provide operational control by itself. The mix of these three elements will vary depending on the challenges of the focus area. Technology allows us to detect the entries and to assess and classify the threat. Personnel provide the response to confront the criminal element. Tactical infrastructure supports the response by either providing access or extending the time needed for the response by deterring or slowing the criminal element's ability to easily cross the border and escape.

As of the end of fiscal year 2008, we have determined that 757 miles of border are under operational control. Of that total, 625 miles were on the southwest border between the United States and Mexico, where a majority of illicit, cross-border activity occurs. Across the southwest border, we have made significant strides in increasing our situational awareness and tactical advantage over those seeking to violate our laws. With increased situational awareness, we can better understand where we have the highest threats and vulnerabilities, and assess where we need to apply our resources. Situational awareness also enables our agents to perform their jobs more safely and more effectively. This is especially critical during times such as these where we are experiencing higher levels of violence at our Nation's borders.

Between the ports of entry, the Border Patrol Sector Chiefs are the field commanders, and CBP personnel involved in border security include Border Patrol Agents and Air and Marine Interdiction Agents. Personnel in adequate numbers are highly effective resources. They can observe and therefore provide for the type of situational awareness that is necessary for operational control. Unique among the elements of the three-legged stool, personnel also have the capacity to respond. Personnel are highly effective and flexible, but the number of personnel required to perform the entire border security mission would be prohibitive if they were not properly augmented by tactical infrastructure and technology.

Tactical infrastructure includes – among other things – pedestrian fence, vehicle fence, roads, and lighting. Tactical infrastructure supports CBP’s ability to respond in several ways. Fence, for example, is a fixed resource that provides a constant and continuous effect. I wish to be very clear—fence alone does not and cannot provide effective control of the border. It does, however, deter and delay illicit cross-border incursions. This continuous and constant ability to deter or delay is what we refer to as “persistent impedance.” There are areas of the border where we have concluded that we must have persistent impedance in order to achieve operational control, because we must at least delay attempted illicit incursions. These delays buy time for our agents to respond. This is critical in areas near cities, for example, where illicit border crossers can easily blend into the population before we interdict them. It is also critical in areas where vehicles reach nearby roads faster than we could respond without persistent impedance.

Technology is an important leg of the stool. Although some refer to technology as a “virtual fence,” technology does not have the persistent impedance capability of a real fence. It does, however, provide timely and accurate information that physical infrastructure could not. Between the ports of entry, technology includes sensors, command and control systems, and communications. Technology is a powerful force multiplier because it has tremendous capability to provide the situational awareness that is a precursor to operational control. Sensors can “watch” the border continuously, guided by appropriate command and control systems. These command and control systems can also help sort the data coming from the sensors so that our agents have very quick access to the most critical information. Technology also supports response capability. With accurate information to identify and classify illicit incursions, agents have many more options about how and when they will respond to the incursion. Improved communications capability also supports response by ensuring our agents will be properly directed and coordinated.

Over the past year, we have made significant strides in strengthening all three legs of our stool. As of April 25, 2009, we had 18,945 Border Patrol Agents on-board. As of May 8, 2009, fencing has been constructed along 625 miles of the 661 miles of southwest border identified by CBP as requiring persistent impedance. Most of the remaining mileage is under construction and will be complete this Spring. With respect to technology, we have purchased 40 mobile surveillance systems (MSSs) and deployed them to the southwest border. These MSSs provide radar and camera coverage and serve as a gap-filler while we deploy more permanent technology solutions. Later in the testimony, I will provide additional detail about our vision for those more permanent solutions.

The northern border of the United States is also important to our national security. In fact, one of the first directives that Secretary Napolitano issued shortly after being confirmed was to review our operational capabilities along the northern border. As we have designed programs to afford greater protection against the entry of dangerous goods and people at all our borders, we have also focused increased attention on specific needs along the Canadian border.

For instance, the Integrated Border Enforcement Team (IBET) program, encompassing 15 regions along the northern border, is a multi-faceted law enforcement initiative comprised of both Canadian and American partners. The IBET is considered a “best practice” by both the Canadian and United States governments and is a model for bi-national collaborative efforts in securing our shared border. The IBET core agencies include CBP, the U.S. Coast Guard (USCG), Immigration and Customs Enforcement (ICE), the Canada Border Services Agency (CBSA), and the Royal Canadian Mounted Police (RCMP). This longstanding, bi-national partnership has enabled the participating law enforcement partners to share information and work together daily with other local, State, and provincial enforcement agencies on issues related to smuggling, organized crime, the vulnerabilities associated with unguarded roads, and other criminal activities along the U.S.-Canada border at and between the ports of entry.

In addition, DHS developed the Border Enforcement Security Task force (BEST) concept to coordinate the efforts of ICE, CBP, and DHS intelligence personnel working cooperatively with foreign, Federal, State, and local law enforcement agencies to take a comprehensive approach to disrupt and dismantle criminal organizations. In early 2008, the first northern border BESTs initiated operations in Blaine, Washington and Buffalo, New York. The BESTs complement and increase the effectiveness of the IBETs by augmenting their investigative capability.

We have also increased the number of Border Patrol agents deployed to the northern border. Our plans call for 1,845 agents by the end of this year, and 2,212 by the end of next year. Our Air and Marine organization has deployed significant resources to the northern border, including the recent deployment of an Unmanned Aerial System (UAS) based in Grand Forks. The DHS Science and Technology Directorate has a number of research projects designed to evaluate technology opportunities tailored to the northern border environment that will advise our plans in the future. Our Secure Border Initiative (SBI) program will implement a measured deployment of sensors in our Buffalo, Detroit, and Swanton sectors starting this spring.

Travel Facilitation at the Ports of Entry

I would like to reinforce and reiterate our important efforts at and beyond the ports of entry. We will discuss this in more detail in future hearings, so I will provide only some concise highlights today.

CBP welcomes nearly 400 million travelers into the United States annually. While security will always be CBP’s primary mission – and is key to maintaining travelers’ confidence – we strive to make the process of entering the U.S. more streamlined, user-friendly and understandable.

In past hearings, we have highlighted our initiatives to streamline the processing of travelers through our land ports of entry and to extend security beyond our physical borders. Those efforts continue and will continue for the future. CBP is prepared and ready for the implementation of Western Hemisphere Travel Initiative (WHTI) secure

document requirements at land and seaports on June 1, 2009. All the project pieces are in place and moving forward – Radio Frequency Identification (RFID) enabled documents, new software technology for the vehicle primary lanes, and the RFID physical infrastructure at our high volume land ports. CBP will take a practical and flexible approach as we implement the WHTI documentary requirements for land and sea on June 1, 2009.

Efficient and effective land border primary operations require a well-integrated strategy and timely deployed technologies, processes, and infrastructure. Building upon the initial success of the WHTI deployment, CBP has identified other critical process areas to integrate, facilitate and enhance border security such as our commercial-passenger dual use lanes, pedestrian processing, and traffic management strategies.

We are continuing to enhance and expand our trusted traveler programs, which expedite the processing of known, low-risk travelers so that we can better focus our attention on higher-risk, unknown travelers. Global Entry is another program to expedite processing of travelers—in this case, United States citizens and Lawful Permanent Residents. This program is a pilot that we are testing in select airports. It provides automated kiosks to validate identification by matching travel documents with biometrics.

The interim final rule on security filing went into effect and has already yielded some promising results. This program will provide CBP timely information about cargo shipments that will enhance our ability to detect and interdict high risk shipments. Comments on this rule will be accepted until June 1, 2009, and implementation using informed compliance will continue until January of next year. This initiative will augment CBP's efforts to screen 100 percent of all cargo before it arrives in the United States using advanced cargo data, automated targeting and risk assessment systems, intelligence, and cutting edge inspection technologies such as large scale X-ray, gamma ray machines, and radiation detection devices. Shipments determined by CBP to be high risk are examined, either overseas as part of our Container Security Initiative, or upon arrival at a U.S. port. Additionally, over 98% of all arriving maritime containerized cargo is presently scanned for radiation through radiation portal monitors.

The infrastructure and facilities supporting many of our ports of entry are outdated and aging. As mentioned earlier, the commitment within the American Recovery and Reinvestment Act by President Obama, Secretary Napolitano, and Congress to enhance and improve the ports of entry is an important step to overhauling CBP's infrastructure. We believe these funds will allow us to accelerate our upgrades, which will in turn increase our quality of service, throughput, and overall performance at the ports.

Technology is also a key enabler for our operations at the ports of entry. A key focus is on the area of Non-Intrusive Inspection. The ability to non-intrusively screen and examine cargo and conveyances will allow us to interdict weapons of mass effect and other contraband more effectively while facilitating the flow of legitimate trade and travel.

Support of U.S./Mexican Counter-Drug Initiatives

A key and growing area of emphasis involves DHS's role in interdicting the illegal flow of weapons and currency into Mexico. The recent surge in violence in the interior and border cities of Mexico poses a significant threat in Mexico and is a serious concern of the United States. Secretary Napolitano has tasked all DHS components, including CBP, to examine how we can reasonably increase our enforcement activities in an effort to identify and interrupt efforts to smuggle weapons and bulk cash shipments into Mexico.

A large portion of illegal drugs consumed in the United States pass through Mexican territory and territorial seas. Illicit trafficking profits flow back to Mexican drug trafficking organizations across our common border. The Mexican Government's ability to confront its drug trafficking industry and its willingness to cooperate with U.S. efforts directly affect the impact of any southwest border activities.

CBP works with its partners in the Drug Enforcement Administration and the High Intensity Drug Trafficking Area centers to expand the National License Plate Reader (LPR) initiative to exploit intelligence on drug traffickers and drug trafficking organizations. The LPR initiative will utilize established locations to gather information regarding travel patterns and border nexus on drug traffickers to enable intelligence driven operations and interdictions. It should be noted that the LPR program is not specific to the Southwest border. The initial phase of the initiative is along the Southwest border, but the program will be expanded to encompass the Northern border and other areas throughout the country. Its capabilities can be utilized to assist other law enforcement entities in their investigations of their high value targets, by combining existing DEA and other law enforcement database capabilities with new technology to identify and interdict conveyances being utilized to transport bulk cash, drugs, weapons, and other illegal contraband.

In a spirit of cooperation, CBP has established positions at the El Paso Intelligence Center (EPIC), the Organized Crime Drug Enforcement Task Force (OCDETF) Fusion Center, and the DEA Special Operations Division. These initiatives enhance interaction with the Intelligence Community (IC) and law enforcement agencies to more effectively facilitate the collection, analysis, and dissemination of actionable drug-related intelligence. CBP has also established two (2) full-time positions at the National Gang Intelligence Center (NGIC) and has partnered with the National Gang Targeting, Enforcement and Coordination Center (GangTECC).

Additionally, CBP's Office Intelligence and Operations Coordination established a National Post Seizure Analysis Team (PSAT) at the National Targeting Center-Cargo, and is in the process of establishing Intelligence Operations Coordination Centers (IOCC) with the first one under construction in Tucson, Arizona. The IOCCs will make CBP a more fully integrated, intelligence driven organization by linking intelligence efforts and products to operations and interdictions.

Operation Panama Express is an OCDETF initiative, executed through OCDETF Co-located Strike Forces, in which CBP participates with the Drug Enforcement Administration (DEA), Federal Bureau of Investigation (FBI), U.S. Immigration and Customs Enforcement, Internal Revenue Service-Criminal Investigations Division, the U.S. Coast Guard, and multiple State and local law enforcement agencies in a multi-agency international drug flow investigation that combines detection and monitoring, investigative, and intelligence resources to provide actionable intelligence to Joint Interagency Task Force-South (JIATF-S) operations to interdict the flow of cocaine from northern South America to the United States. JIATF-S interdiction operations in the transit zone, supported by CBP P-3 Airborne Early Warning, Coast Guard HC-130, and CBP P-3 Tracker aircraft, along with U.S. Coast Guard surface vessels, interdict large, sometimes multi-ton, shipments before they can be split into smaller loads for movement across the southwest border over multiple routes and distributed to U.S. cities, towns, and small communities. Interdicting these large loads in the Transit Zone supports the Southwest Border and Merida Initiatives by preventing illicit drugs from entering the distribution networks through Central America and Mexico. This deprives the violent Drug Trafficking Organizations of the product and subsequent cash flow that supports their operations.

CBP is also responsible for detecting and preventing unauthorized incursions into the United States. Toward this end, CBP continues to work with the Mexican Government in the development of increased law enforcement surveillance and interdiction capabilities. Detection of U.S./Mexican border air intrusions is essential to effective interdiction operations along our borders with Mexico. The primary means of detection is a large radar network, monitored at the Air and Marine Operations Center (AMOC) in Riverside, California. Information is fed to the AMOC through a network of airborne early warning, aerostat, Federal Aviation Administration (FAA), and ground based radar systems. Personnel at the AMOC detect aircraft "short landings" and border penetrations and coordinate CBP and Mexican interdiction assets to intercept, track, and apprehend smugglers as they transverse the U.S./Mexico border.

The Government of Mexico maintains a strong commitment to interdiction. CBP will continue to assist the Government of Mexico in its counter-drug effort, including Command, Control, Communications, and Information support.

Intelligence and Operational Coordination

CBP continues to evolve into a more integrated, intelligence driven organization and we are in the process of establishing a more robust field organization. The CBP Office Intelligence and Operations Coordination is in the process of developing capabilities which will integrate CBP intelligence and operational elements for more effective command and control, mission deployment, and allocation of resources.

Intelligence gathering and predictive analysis require new collection and processing capabilities. CBP is developing the Analytical Framework for Intelligence (AFI), a set of

data processing tools that will improve the effectiveness of CBP and other DHS analysts in detecting, locating, and analyzing terrorist networks, drug trafficking networks, and similar threats. These intelligence and operational coordination initiatives complement the Secure Border Initiative's (SBI) technology programs and will be shared with other agencies, including – but not limited to – the Drug Enforcement Administration.

Secure Border Initiative (SBI)

The Secure Border Initiative (SBI), as currently configured, contributes to two of the three legs of our border security stool.

As I previously mentioned, the Border Patrol identified 661 miles along the southwest border where persistent impedance was a necessary condition for effective control. In those areas, the only cost-effective options to provide persistent impedance are physical infrastructure or personnel. Within the miles identified by the Border Patrol, our analysis shows that technology is not an adequate substitute. Technology might well allow us to watch illicit border crossers blend into the population or travel to a route of egress—but it does not delay or impede the crossers long enough to enable an effective response.

Going forward, the BSFIT appropriation, which is managed by the SBI office, will continue to dedicate funding to additional tactical infrastructure programs. Much of the focus, however, will be on high priority infrastructure projects other than fence—for example, roads and lighting. With the fence projects largely complete, we will be increasing our emphasis on technology within the SBI program - *SBI_{net}*.

Southwest Border Security Initiative

In March, Secretary Napolitano announced a far-reaching DHS Southwest Border Security Initiative to crack down on Mexican drug cartels through enhanced border security, including the deployment of hundreds of new personnel, enhanced intelligence technology to maximize capabilities and strengthen coordination with other federal law enforcement entities such as the Department of Justice, the Bureau of Alcohol, Tobacco, Firearms and Explosives, the DEA, and the FBI, as well as State, local, tribal, and Mexican law enforcement authorities. With regard to CBP, the Secretary's initiative:

Initiates 100 percent southbound rail scanning – CBP previously did not screen any of the cargo traveling by rail from the United States into Mexico; it is now scanning all rail cargo for weapons, ammunition, and currency. Existing non-intrusive inspection equipment is being used to detect contraband in cargo on each of the eight rail crossings on the southwest border.

Adds Border Patrol Agents at POEs – CBP is placing up to 100 Border Patrol agents at southwestern ports of entry to assist the Office of Field Operations (OFO) and to bolster outbound inspections from the U.S. into Mexico in order to detect arms and bulk-cash smuggling.

Adds Mobile Response Teams – Three Mobile Response Teams of 25 CBP officers each are periodically deploying to the southwest border to participate in focused operations developed to combat arms and bulk cash smuggling.

Augments Search Technologies – An additional two low-energy mobile x-ray units have been moved to the southwest border, in addition to the seven already present, to help CBP identify anomalies in passenger vehicles.

Engages Canine Teams – A total of twelve teams of “cross-trained” canines – trained to identify both firearms and currency – have been deployed to the southwest border.

Adds License Plate Readers – Outbound lanes currently equipped with license plate readers will receive upgraded license plate reader technology to improve CBP’s ability to identify the vehicles of known or suspected smugglers of cash, weapons, drugs, or persons. This information is shared with other law enforcement agencies through EPIC and the OCDETF Fusion Center.

Enhances Operation Stonegarden Grant Funding on the Border – Grant guidance for the remaining balances in Operation Stonegarden from FY 2006 to FY 2008 will be modified to enhance current State, local, and tribal law enforcement operations on the southwest border. The new guidelines will expand the scope of what the funds can be used for, freeing up to \$59 million for State, local, and tribal law enforcement on the border to pay for additional law enforcement personnel, operational overtime expenses, and travel or lodging for deployment to the southwest border.

Actively Engages State, Local, and Tribal Law Enforcement – DHS is aggressively reaching out to law enforcement in border communities, recently conducting a firsthand tour of State and local law enforcement operations along the southwest border and leading bi-monthly conference calls with chiefs of police and sheriffs in a classified setting.

Conclusion

Mr. Chairman and Senators of the Subcommittee, your continued support of CBP has led to many positive outcomes in border security and improvements in travel and trade facilitation. These investments are paying off each day and the recent investments in CBP’s aging infrastructure will soon be evident. The resources we put at our border, whether it is people, technology, or tactical infrastructure enhance our ability to address all hazards and all threats at our Nation’s borders.

We believe the next logical investment is in the workforce itself. A very important aspect to our staffing is being sure that our officers and agents have the right training, pay, and benefits commensurate with their complex and often dangerous work. Over the next year, we will be looking closely at ways to ensure we have the ability to recruit, retain, and compensate our workforce.

Thank you for the opportunity to describe our plans for border security and to highlight some of our progress to date. With your continued support of DHS and CBP, I am confident that we will continue to make tremendous strides in increasing control of our borders.

I look forward to your questions.

